



In the Supreme Court of the United States

No. 79-732

FRED W. PHELPS, SR.
Petitioner.

VS.

STATE OF KANSAS.
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

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In the Supreme Court of the United States**No. 79-732**

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vs.
STATE OF KANSAS,
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RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

COMES NOW, the Respondent by and through their counsel, Roger N. Walter, Disciplinary Counsel for the State of Kansas and Philip A. Harley, Special Assistant to the Disciplinary Counsel, and for their response to the submitted Petition for a Writ of Certiorari present the following brief in opposition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts those provisions cited by Petitioner.

STATEMENT OF THE CASE

A. Statement of Facts.

Petitioner's statement of facts contains some errors; therefore Respondent offers a separate statement of facts.

Petitioner, Fred W. Phelps, Sr., was an attorney licensed to practice law in the State of Kansas prior to July 20, 1979. In 1975 and 1976 Fred W. Phelps, Sr., represented one, Sherman Robinson. Mr. Robinson had filed suit against Carolene Brady, a court reporter, wherein he alleged that Ms. Brady had failed to timely prepare and deliver a transcript. The dispute was eventually tried to a jury. (For a more detailed examination of *Robinson v. Brady* see Kansas Supreme Court opinion attached as Appendix "A".)

During the course of the trial Fred Phelps, Sr., made serious allegations, in the form of proffers, concerning Ms. Brady's reputation and alleged past improprieties. These were repeated by Fred W. Phelps, Sr., in a Motion for New Trial filed by him after the jury returned a defendant's verdict. Fred W. Phelps, Sr., alleged that certain individuals would testify in a certain manner if allowed to take the stand. Upon inquiry by defendant's counsel, it was discovered that many of the proposed witnesses would not testify in the manner indicated by Fred W. Phelps, Sr.

These facts were brought to the attention of the Disciplinary Administrator of the Kansas Supreme Court, an official charged with overseeing the attorney disciplinary procedures in the State of Kansas. After investigation and review by a panel of three attorneys, the matter was referred for an investigative hearing pursuant to the rules of the Kansas Supreme Court. A hearing was held in March, 1978. The hearing panel then submitted its pro-

posed findings and recommended discipline to the Kansas Supreme Court in February, 1979.

Pursuant to Kansas Supreme Court rules, the Respondent in a disciplinary matter is given a choice of either accepting the factual findings of the hearing panel or of taking exception and having the Supreme Court determine the facts from its review of the record. In either case, the Kansas Supreme Court ultimately decides on the appropriate discipline. Fred W. Phelps, Sr., chose to take exception to the hearing panel's factual findings and thus invited the Kansas Supreme Court to review the record and make its own conclusions, which the Court did after both sides filed briefs and made public oral arguments to the Court.

On July 20, 1979, the Kansas Supreme Court filed its opinion and order in the case of *State v. Phelps*. Because that date becomes crucially important, a copy of the Clerk of the Kansas Supreme Court's Docket Sheet is included in this response as Appendix "A".

In August, 1979, Fred W. Phelps, Sr., attempted to secure relief from the Order of Disbarment by filing a class action in the United States District Court for the District of Kansas. That case has now been dismissed. *Phelps v. Kansas Supreme Court, et al.*, No. 79-1381, United States District Court for the District of Kansas. (Appendix "B"). A motion for reconsideration was filed by Mr. Phelps and denied. (Appendix "C"). However, Respondent strongly disagrees that the federal judge in any manner indicated the United States Supreme Court should grant a Writ of Certiorari in this case. The federal judge merely indicated to Fred W. Phelps, Sr., that this was the only Court that had proper jurisdiction, nothing more.

B. How Federal Questions Arose.

As previously noted, Fred W. Phelps, Sr., was disbarred by order of the Kansas Supreme Court after exhaustive legal proceedings. During the course of those proceedings Fred W. Phelps, Sr., continuously raised objection to various procedural practices utilized by the Kansas Supreme Court and the hearing panels. The Kansas Supreme Court consistently overruled the objections and ultimately entered its order of disbarment. Fred W. Phelps, Sr., complains the disciplinary rules and procedures created by the Kansas Supreme Court are inherently unconstitutional and that the particular procedure afforded him was constitutionally improper.

REASONS FOR NOT GRANTING CERTIORARI

I. Petitioner Has Filed the Petition for Writ of Certiorari Out of Time in That More Than Ninety Days Elapsed Between the Entry of Judgment by the Supreme Court of Kansas and the Filing of This Petition.

Applicable federal statutes provide that a litigant seeking review of a state court decision must file a Petition for Writ of Certiorari within ninety days of the entry of judgment by the state court. 28 U.S.C. §2101(c). Petitioner in this case has failed to comply with that jurisdictional requirement and therefore, the Court should deny the Petition. *FTC v. Minneapolis - Honeywell Regulator Co.*, 344 U.S. 206 (1952); *Bradford Electric Light Co., Inc. v. Clapper*, N.H., 284 U.S. 221 (1931); *FAC v. Colgate - Palmolive Co.*, 380 U.S. 374 (1965).

Judgment was entered by the Clerk of the Kansas Supreme Court on July 20, 1979. At no time did Fred W. Phelps, Sr., request the Court to modify its opinion or

alter its judgment. In fact, Fred W. Phelps, Sr., acted as if the order was final in that he commenced a federal court action attacking the state court decision on July 31, 1979. *Phelps v. The Kansas Supreme Court, et al.*, No. 79-1381 United States District Court for the District of Kansas. The records of the Clerk of the Kansas Supreme Court indicate the mandate of the Supreme Court was also issued on July 20, 1979. (Appendix "A"). While Fred W. Phelps, Sr., did file a Motion to Stay on August 9, 1979, that Motion was never granted. The Motion to Stay had nothing whatsoever to do with merits of the Kansas Supreme Court decision but rather merely asked the Kansas court to await the federal court opinion and judgment. Thus, at no time did Petitioner ever make a serious effort to ask the Kansas Supreme Court to reconsider its opinion of July 20, 1979, but at all times acted as if the opinion was final.

Fred W. Phelps, Sr., filed this Petition for Writ of Certiorari on November 7, 1979. One hundred and ten (110) days elapsed between the entry of judgment by the Kansas Supreme Court and the filing of this Petition. Clearly, Petitioner has failed to comply with the time requirements of 28 U.S.C. §2101(c) and this Petition should be denied.

II. Petitioner's Allegations That the Kansas Supreme Court Rules Relating to Discipline Violate the Kansas Constitution Are Frivolous and Petitioner Presents No Compelling Issue of National Importance or Application for the Court's Determination.

Petitioners seeking a Writ of Certiorari from this Court have an obligation to demonstrate that there are "special and important reasons" for the Court to issue a Writ of Certiorari. 28 U.S.C. Sup. Ct. R. 19(1). Gen-

erally, such review is only afforded in those cases where there is a split among the state supreme courts or federal circuits regarding important federal questions. It is not a remedy for achieving "individual justice in individual cases." Wright, Miller, Cooper and Grossman, *Federal Practice and Procedure*, Jurisdiction §4004.

The Petitioner has failed to demonstrate his case reaches the level of importance normally required by the Court. While he alleges innumerable constitutional deficiencies in the Kansas Supreme Court Rules for Discipline of Attorneys an examination of those allegations reveals their shallow, frivolous, and capricious quality. In addition, the issue he raises has been considered by other courts and universally resolved adversely to Petitioner.

It should be noted that the Kansas Supreme Court Rules relating to discipline of attorneys (Appendix "D" and "E") are substantially the same as those recommended by the American Bar Association. *Standards for Lawyer Discipline and Disability Proceeding*, Joint Committee on Professional Discipline, American Bar Association. Thus, it is apparent that Kansas rules are in keeping with the vast majority of her sister states. They have passed the scrutiny of hundreds of dedicated attorneys who helped draft the model rules. While certainly this is no guarantee of constitutionality, it does demonstrate a uniformity of opinion regarding such rules and does not support an argument for Court review of the rules.

Respondent will not respond to each and every allegation made by the Petitioner since an argument on the merits is inappropriate at this time. However, attached as an appendix is the opinion of Judge Clarence Brimmer in the case of *Phelps v. The Kansas Supreme Court et al.*, supra. Judge Brimmer responded to each of Petitioner's claims in detail. It should be noted that no authority exists

to support the positions taken by Petitioner. Rather, his arguments are entirely novel and without merit. Thus, clearly failing to meet the burden incumbent upon a Petitioner seeking a Writ of Certiorari.

Petitioner relies heavily on the case of *In Re Ruffalo*, 390 U.S. 544 (1967). He argues that the Kansas Supreme Court's actions in *State v. Phelps*, supra, directly contradict this Court's opinion. Petitioner's reliance is misplaced. A careful examination of *In Re Ruffalo*, supra, reveals its inapplicability.

The Respondent in *In Re Ruffalo*, had been disbarred by the Ohio Supreme Court. His original disciplinary hearing had charged him with many counts of impropriety including solicitation by use of an investigator. Ruffalo specialized in representing railroad employees who had been injured on the job. He utilized an investigator, who also worked for a railroad as a yardman. On occasion Ruffalo asked his investigator to handle matters involving the investigator's employer. At the close of Ruffalo's disciplinary hearing the complaint was amended to include a charge that Ruffalo violated the Code of Professional Responsibility by having an investigator who was required to work against the interests of his own employer. This last charge was added after Ruffalo and the investigator had already testified. The Ohio Supreme Court found only the one violation of professional ethics and disbarred Ruffalo. It should be noted that Ruffalo sought a Writ of Certiorari, but was denied. *Mahoning County Bar Assn. v. Ruffalo*, 176 Ohio St. 263, 199 N.E. 2d 396, cert. denied, 379 U.S. 931.

The federal courts then began their disciplinary process based on the state court action. The United States District Court found the violation insufficient to justify disbarment and allowed Ruffalo to continue to practice. The Sixth

Circuit Court of Appeals ordered Ruffalo to show cause why his name should not be stricken from the rolls. After a review of the record from the Ohio courts the Sixth Circuit concluded that Ruffalo's name should be stricken. *In Re Ruffalo*, 370 F. 2d 447 (6th Cir. 1967). This Court granted certiorari and reversed the Sixth Circuit. The majority of the Court held that the notice given Ruffalo in the Ohio disciplinary proceeding was inadequate and created a "trap" for Ruffalo. In addition, Ruffalo's improper conduct was insufficient to justify disbarment. The *Ruffalo* opinion had important limitations. The standard created in *Ruffalo* was a standard for federal courts. It was specifically not applied to the state proceeding.

The facts in *In Re Ruffalo*, supra, are not analogous to this case. Petitioner claims that the Kansas Supreme Court added charges after he presented his defense, à la Ruffalo. A short review of Petitioner's argument will demonstrate the inapplicability of *In Re Ruffalo*, supra.

Petitioner claims that the Kansas Supreme Court made findings and conclusions without notice or opportunity to be heard and second that he made new allegations after he presented his evidence. Specifically, Petitioner is referring to the Kansas Court's findings that Petitioner filed and prosecuted a lawsuit for the purpose of holding the defendant up to unnecessary public ridicule and to harass the defendant. Petitioner argues that the hearing panel had limited the evidence to other issues and he was not allowed to defend himself in regard to these allegations. Petitioner had specifically repudiated the hearing panel's report and requested a hearing on the merits by the Supreme Court. Petitioner had voluntarily introduced the evidence which formed the basis for these conclusions, even though, the state had been overruled in its attempts to present the same evidence.

But importantly, these were not the only allegations or findings which formed the basis for the discipline. The Kansas Supreme Court used this examination of the trial court record and its findings in that regard to enhance the punishment or discipline. Unlike *In Re Ruffalo*, supra, where there was only a single instance of improper conduct, in this instance there are numerous findings of misconduct.

On examination, it is apparent that Fred W. Phelps, Sr., has not met his burden in seeking a Writ of Certiorari. His claim does not involve important federal or state questions of law. There is no disagreement among various courts as to issues involved herein. The Kansas Supreme Court has not contradicted or repudiated any federal law, constitutional provision, or decisions of this Court. Like many a losing party, Fred W. Phelps, Sr., appears before this Court a disgruntled litigant unable to accept the fact that he had his day in court and lost. The Court should not burden itself with matters such as this one. Fred W. Phelps, Sr., was afforded due process throughout his disciplinary procedure. He was allowed to argue his case "on the merits" before the highest court in the jurisdiction. He sought review of the decision in the United States District Court for the District of Kansas and was denied. He now tardily appears before this Court and again seeks review. This Court should deny the Petition for Writ of Certiorari as not being timely filed and as not presenting a substantial federal question.

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APPENDIX**APPENDIX "A"**

IN THE

SUPREME COURT OF THE STATE OF KANSAS

No. 50834

STATE OF KANSAS,
Petitioner,

vs.

FRED W. PHELPS, SR.,
Respondent.**DOCKET SHEET****NOTICE OF APPEAL**

| | |
|---------------|---|
| Feb. 12, 1979 | Complaint |
| Feb. 12, 1979 | Answer |
| Feb. 12, 1979 | Panel Report, Findings, Conclusions and Recommendation |
| Feb. 12, 1979 | Citation (Copy mailed to Respondent certified mail, Receipt No. 761797) |
| Mar. 2, 1979 | Respondents Exceptions 2 tp & proof |
| Mar. 5, 1979 | I, Betty Phelps This date received 6 Vol- umes of Transcript. |
| Mar. 23, 1979 | Motion by Respondent for extension of time to file brief and Alternative Motion for Full Record |
| Mar. 23, 1979 | Motion by Phelps to Dismiss (9 TP) & Proof |
| Mar. 23, 1979 | Request for Oral Argument (9 TP) & Proof |

Mar. 28, 1979 Response to Respondent's Alternative Motion filed 3-23-79. (9 TP) & Proof

Mar. 28, 1979 Reply to Respondent's Motion to Dismiss (9 TP) & Proof

April 2, 1979 Denied.

April 2, 1979 Denied

April 2, 1979 Clerk is directed to furnish Respondent with copies of pages 302-321, inclusive, 344, 396, and 406 of transcript. Copies of any exhibits are to be made available to respondent at his expense and paid for at time.
Respondent granted to April 20, 1979 to file brief FINAL EXTENSION
Journal Indexed Counsel notified

April 2, 1979 Response to Petitioner's "Reply to Respondent's Motion to Dismiss". (9 TP) & Proof

April 3, 1979 Noted and considered. Moot as motion decided prior to filing of response.
Journal Indexed Counsel notified

April 20, 1979 Motion by Respondent to file brief in excess of (50) pages (9tp) 7 Proof

April 20, 1979 Brief of Respondent

April 23, 1979 Granted.
Journal Indexed Counsel notified

April 24, 1979 Motion by Disciplinary Counsel to Supplement Record (9 TP) & Proof

April 25, 1979 Cause entered trial Docket Docket indexed
Cause assigned for June 5, 1979 Journal indexed
Counsel notified by printed docket

April 30, 1979 Response to Motion to Supplement Record (9 TP) & Proof

May 1, 1979 Denied
Journal Indexed Counsel notified

May 7, 1979 Brief of Appellee

May 16, 1979 Motion for Leave to File Reply Brief in Excess of 15 Pages (8 TP) & Proof

May 17, 1979 Granted.
Journal Indexed Counsel notified

May 24, 1979 Reply Brief of Respondent

June 8, 1979 Motion by Appellee for extension of time to file Post-Hearing brief Post Decision Brief in hold file

June 11, 1979 The Court finds the ends of justice will be best served by granting the motion and The State of Kansas shall have three days to file a reply brief.
Journal Indexed Counsel notified

June 12, 1979 Post Hearing Brief of Respondent.

July 20, 1979 Judgment entered Order of Disbarment Per Curiam
Journal indexed—Counsel notified
Syllabus & Opinion filed
Syllabus & Opinion copied
Judgment docketed
Mandate issued
Satisfying Judgment—Taxing costs
Balance deposit returned to Entries

Aug. 9, 1979 Motion for Stay of Order of Disbarment (9 TP) & Proof

Aug. 13, 1979 Amended Motion for Stay (10 TP) & Proof

Aug. 30, 1979 The motion to stay the order of disbarment, entered July 20, 1979, is Denied.
Journal Indexed Counsel notified

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
NO. 79-1381

FRED W. PHELPS, SR.,
Plaintiff,

vs.

THE KANSAS SUPREME COURT, THE HONORABLE ALFRED G. SCHROEDER, THE HONORABLE ALEX M. FROMME, THE HONORABLE DAVID PRAGER, THE HONORABLE ROBERT H. MILLER, THE HONORABLE RICHARD M. HOLMES, THE HONORABLE KAY McFARLAND, and THE HONORABLE HAROLD S. HERD, Each in His/Her Capacity as Justice of the Kansas Supreme Court; THE HONORABLE ARNO WINDSCHEFFEL, in His Capacity as Disciplinary Administrator of The Kansas Supreme Court, and THE STATE OF

KANSAS,
Defendants.

JUDGMENT DISMISSING ACTION

(Filed October 31, 1979)

The above-entitled matter having come on regularly for hearing before the Court, both parties appearing by and through their respective attorneys, and the Court having heard argument of counsel in support of and in opposition to the Defendants' Motion to Dismiss and the Plaintiff's Motion for a Preliminary Injunction and for Certification of Class, took the matter under advisement, and having reviewed all material on file herein and having prepared its Order finding in favor of the Defendants' Motion to Dismiss and against the Plaintiff's motions; it is hereby

ORDERED that the Complaint filed herein, together with the cause be, and the same is hereby dismissed with prejudice, the parties to bear their own costs of action expended herein.

Dated this 29th day of October, 1979.

/s/ Clarence A. Brimmer
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

NO. 79-1381

FRED W. PHELPS, SR.,
Plaintiff,

vs.

THE KANSAS SUPREME COURT, THE HONORABLE ALFRED G. SCHROEDER, THE HONORABLE ALEX M. FROMME, THE HONORABLE DAVID PRAGER, THE HONORABLE ROBERT H. MILLER, THE HONORABLE RICHARD M. HOLMES, THE HONORABLE KAY McFARLAND, and THE HONORABLE HAROLD S. HERD, Each in His/Her Capacity as Justice of the Kansas Supreme Court; THE HONORABLE ARNO WINDSCHEFFEL, in His Capacity as Disciplinary Administrator of the Kansas Supreme Court, and THE STATE OF KANSAS,

Defendants.

ORDER

(Filed October 31, 1979)

The above-entitled action having come before this Court upon the Plaintiff's motion for a preliminary injunction and the Defendants' motion to dismiss, the Court having advanced and consolidated the trial of this action on the merits with the hearing of the application of the Plaintiff for a preliminary injunction under Rule 65(a)(2), F.R.C.P., and the parties having stipulated to the admission in evidence of extensive and voluminous exhibits consisting in part of the entire record before the Kansas Supreme Court in the case of *State v. Phelps*, No. 50834, the record on appeal in two cases entitled *Robinson v. Brady*, the rules of the Kansas Supreme Court relating to discipline

and disbarment of attorneys, and the Order of Disbarment of the Plaintiff; and the Court having heard and considered the arguments in support of and in opposition to said motions, and having read the briefs and other documents filed in the case, and being otherwise fully advised in the premises, does find as follows:

The above-entitled case arises out of disciplinary proceedings had before the Supreme Court of the State of Kansas and its order on July 20, 1979 disbarring the Plaintiff from the practice of law before the courts of the State of Kansas. The Plaintiff seeks to enjoin enforcement of the Order of Disbarment and the rules of the Kansas Supreme Court for discipline and disbarment of attorneys because of his claims of the unconstitutionality thereof.

The disciplinary proceedings before the Supreme Court of Kansas resulted from the actions of Phelps in trying the case of *Robinson v. Brady*, No. 125, 742 (1977). That action was brought by Sherman Robinson against Carolene Brady, a court reporter, of the State of Kansas. Robinson had been a defendant in a criminal action in which certain proceedings had been taken with Carolene Brady acting as the court reporter in her official capacity. Robinson alleged that Brady promised him a transcript of certain of those proceedings by a specific date and that she failed to provide Robinson with the transcript as promised. Robinson alleged in the suit that Brady had violated her official responsibilities and had breached an express contract to provide the transcript. Damages were sought from Brady as a result of her alleged actions and Phelps appeared as Robinson's attorney in the case.

During the trial of *Robinson v. Brady*, the court refused to hear testimony from a number of witnesses listed by Phelps. Phelps made a proffer at trial that he believed that if the witnesses were permitted to testify they would

testify, among other things, that they knew Brady, knew her reputation for truth and veracity, knew said reputation to be bad, and knew of instances where Brady had violated her sworn oath of office by leaking confidential information that she had access to through her position as a court reporter.

The case ended in a verdict for the Defendant, Carlene Brady, and at the close of trial Phelps moved for a new trial. In his motion for a new trial Phelps offered as error on the part of the trial court the refusal to hear evidence from the witnesses referred to above. He again stated in his motion for a new trial what he expected the witnesses to testify to if they were allowed to testify. The motion was denied and the case was eventually affirmed on appeal.

It was brought to the attention of the disciplinary administrator for the State of Kansas that the witnesses referred to would not have testified as Phelps had stated they would, and that Phelps had no reasonable basis upon which to assume that some or all of them would have in fact so testified. The disciplinary administrator filed proceedings against Phelps, alleging that Phelps violated the attorneys' Code of Ethics, his oath of office, and Kansas statutory law by his actions in the above case. A hearing was held before a disciplinary panel of the State of Kansas on the allegations. At that hearing it was stated that the sole issue involved was whether Phelps had a reasonable basis from which to assume that the witnesses would have testified in the manner in which he stated that he thought they would. The issue of the truth of the allegations that Phelps was attempting to prove by the testimony was specifically excluded as an issue before the hearing panel.

The hearing panel found, as a result of the proceedings held before it, that Fred Phelps had no reasonable basis from which to have believed that witnesses would have testified as he said they would in his proffer at trial and in the motion for a new trial. The findings of the hearing panel, along with a recommendation of public censure, were sent to the Supreme Court of Kansas.

Disciplinary proceedings on the matter were had before the Kansas Supreme Court. They found that Phelps had violated his oath as an attorney, that he had violated the disciplinary rules of the State of Kansas, that he had violated Kansas statutory law by his actions. The Supreme Court did not follow the recommendations of the hearing panel in regard to the punishment to give Phelps. Instead Phelps was disbarred from practice before the courts of Kansas on July 20, 1979.

Following his disbarment in that action, Phelps filed suit in this Court alleging constitutional violations in the adoption, administration, and application of the Kansas disciplinary rules pertaining to attorneys, and seeking injunctive and declaratory relief from this Court declaring said rules to be unconstitutional on their face and as applied to the Plaintiff in the disciplinary proceedings before the Kansas Supreme Court. Plaintiff prays that Defendants be enjoined and restrained from enforcing the same generally. The Defendants have moved to dismiss the complaint on the grounds that it fails to state a cause of action for which relief can be granted, and for lack of subject matter jurisdiction. The matter is before the Court now on the merits of the action as well.

The Defendants in this action are the individual judges of the Kansas Supreme Court, the disciplinary administrator of the Kansas Supreme Court, and the State of Kansas itself. Plaintiff has styled his complaint as a civil

rights complaint under 42 U.S.C. §§ 1981, 1983, 1986, and 1988, and 28 U.S.C. §§ 1331, 1343, and 2201. He also alleges many violations of the United States Constitution. Plaintiff desires the complaint to be heard as a class action suit including all of the attorneys of the State of Kansas and all of the applicants to the bar in Kansas. Plaintiff has formulated his suit to appear to be an action to protect the rights of all attorneys of the State of Kansas, and to determine the constitutionality of the rules of the Kansas Supreme Court on their face as well as applied in his disciplinary proceedings. A close reading of the complaint indicates that the true purpose of the Plaintiff in filing this suit is to have this Court review the proceedings of the Kansas Supreme Court in its action against the Plaintiff. Plaintiff alleges that the disciplinary rules of the Kansas Supreme Court are unconstitutional on their face, but informs the Court that it is necessary to go into his particular case to show why the rules are unconstitutional as written. He asserts in the complaint that, "the entire course of conduct of Defendants as complained of herein with respect to their treatment of this Plaintiff, illustrates and demonstrates that Defendants have adopted and are administering said Rules in violation of the Federal Constitution." Plaintiff desires a review of the proceedings had in his individual case, claiming in part that it is necessary to review those proceedings to understand the underlying unconstitutionality of the rules.

The necessity for this type of attack is evident. The United States Supreme Court and the lower federal courts have held numerous times that the lower federal courts do not have subject matter jurisdiction to review state disbarment proceedings had before state courts. *Selling v. Radford*, 243 U.S. 46 (1917), *Theard v. U.S.*, 354 U.S. 278 (1958), *Gately v. Sutton*, 310 F.2d 107 (10 Cir., 1962), and *Doe v. Pringle*, 550 F.2d 596 (10th Cir., 1976). This

is true even though the state court proceedings are alleged to have been constitutionally deficient. The Tenth Circuit in *Doe v. Pringle*, supra, at 599, held that, "We concur in the district court's finding that it is without subject matter jurisdiction to review a final order of the Colorado Supreme Court denying a particular application for admission to the Colorado Bar. This rule applies even though, as here, the challenge is anchored to alleged deprivations of federally protected due process and equal protection rights. . . . Doe cannot invoke the provisions of § 1983 of the Civil Rights Act in federal district court so as to circumvent and avoid his obligation to seek direct review in the United States Supreme Court." The civil rights statutes may not be read as asserting a new form of federal review between the appellate courts of the states and the United States Supreme Court. *Mildner v. Gulotta*, 405 F.Supp. 182 (D.C.N.Y., 1975).

As indicated by the court in *Doe v. Pringle*, supra, the only federal court that may review the proceedings of the Kansas Supreme Court is the United States Supreme Court. We do not have the authority to review the proceedings of the Kansas Supreme Court in the matter of the disbarment of Fred Phelps. *Mayes v. Honn*, 542 F.2d 822, 823 (10th Cir., 1977). That the United States Supreme Court will and does review disciplinary proceedings of state supreme courts is shown by the number of such cases recently before the Supreme Court. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978), *In Re Primus*, 436 U.S. 411 (1978). All of those proceedings, reached the United States Supreme Court on writ of certiorari from the state courts.

However, the court in *Doe v. Pringle*, supra, acknowledged that the situation is different when the complainant asserts due process or equal protection deprivations in

the adoption and/or administration of general rules and regulations governing admission and discipline. This Court does have the ability to determine the Plaintiff's allegations that the rules of the Kansas Supreme Court are unconstitutional as generally written and administered.

Disbarment, while designed for the protection of the public, is in effect a taking of the right to practice law as punishment to the attorney. An attorney is entitled to procedural due process during disbarment proceedings. *In Re Ruffalo*, 390 U.S. 544 (1968). Procedural due process generally means that a party is entitled to notice of the charges against him, *In Re Ruffalo*, *supra*, *In Re Oliver*, 333 U.S. 257 (1948), and *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1 (1978), and a hearing on those charges. *Mathews v. Eldridge*, 424 U.S. 319 (1976), *Boddie v. Connecticut*, 401 U.S. 371 (1971), and *Wolff v. McDonnell*, 418 U.S. 539 (1974).

There are no set rules as to what type of hearing and notice procedural due process demands. Procedural due process calls for such protection as the situation demands. *Memphis Light, Gas and Water Division v. Craft*, *supra*. The Supreme Court in *Mathews v. Eldridge*, *supra*, set out a balancing test to be used as a guideline to the type of protection that an individual is to be afforded in varying situations. "Our decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement will entail."

A review of the Kansas disciplinary rules and the way in which they are applied shows that they provide more than adequate due process and equal protection. All complaints against an attorney must go through the disciplinary administrator and a Review Committee consisting of three members of the State Board of Bar Examiners before formal charges may be filed against an attorney. Once charges are filed, the formal hearing may be preceded by a prehearing to clarify and limit the issues. The formal hearing itself is conducted much like a trial in that the statutory rules of evidence apply, the respondent may cross-examine the witnesses and present evidence, and the proceedings are recorded by a certified court reporter. The state has the burden of proving its case by clear and convincing evidence.

If the respondent takes exception to the findings of the panel hearing, the case may be argued before the Supreme Court of Kansas. The parties are allowed to file briefs and the hearing is open to the public. The Supreme Court hearing is on the merits of the case as supported by the hearing panel record.

Plaintiff alleges that certain of the specific rules mentioned above are unconstitutional. These rules include the denial of extensive discovery, the failure of the hearing panel proceedings to be open to the public, the use of a burden of proof standard less than the criminal standard of beyond a reasonable doubt, the denial of a hearing on the merits, the consideration of Phelps' past discipline by the Supreme Court of Kansas in justifying the severity of the punishment and the expansion of issues by the Supreme Court to include issues that had not been considered by the hearing panel.

These rules complained of by the Plaintiff do not amount to a denial of due process or equal protection to an

attorney in the disbarment process. Plaintiff has not cited a single case that supports his proposition that the denial of extensive discovery is a denial of due process. One court recently considering that issue specifically found that it was not a denial of due process. *Matter of Murray*, 362 NE2d 128 (Ind. 1977). It should be noted that even criminal defendants are afforded only the minimum of discovery and that has never been held to be a denial of due process. *Palermo v. United States*, 360 U.S. 343 (1959), *Campbell v. United States*, 365 U.S. 85 (1961).

Plaintiff's claim that the procedures of Kansas Supreme Court are secret inquisitorial hearings is mere rhetoric without merit. The panel hearings are now by law open to the public, but were not so at the time of the Phelps hearing. However, the closed nature of the panel hearings as they existed at that time did not deny attorneys due process or equal protection of the law.

In *Getty v. Reed*, 547 F. 2d 971 (6th Cir., 1977) appellant alleged the unconstitutionality of the attorney disciplinary proceedings of the State of Kentucky. The Kentucky proceedings involved in that case provided attorneys with fewer rights than those provided by the Kansas Supreme Court rules. The Kentucky State Bar examiners, pursuant to the rules in effect at that time, reviewed the evidence against the attorney *in camera* without the attorney having the right to be present. They then made recommendations to the Kentucky Supreme Court as to the disciplinary action to be taken. The Supreme Court of Kentucky held an open hearing with the attorney present based on the record of the *in camera* hearing. The Getty court found no significant violation of due process in the rules of the Kentucky Supreme Court.

Although rudimentary requirements of due process must be observed in disciplinary proceedings, there is no

requirement for a public hearing. *State v. Turner*, 538 P. 2d 966 (Kan. 1975). Despite this, the plaintiff's final disciplinary proceeding before the Kansas Supreme Court was open to the public, and plaintiff was afforded a public hearing.

Plaintiff alleges constitutional deficiency in the standard of proof required in the Kansas proceedings. Plaintiff asserts that disciplinary proceedings should be subject to the criminal standard of proof beyond a reasonable doubt. No authority is given for this proposition. Disciplinary proceedings are unique proceedings. *Niles v. Lowe*, 407 F. Supp. 132 (D.C. Hawaii, 1976), *Polk v. State Bar of Texas*, 480 F. 2d 998 (5th Cir., 1973). They are not criminal proceedings. *In Re Echeles*, 430 F. 2d 347 (7th Cir., 1970), *Yokozeki v. State Bar*, 521 P. 2d 858 (Cal., 1974), *Office of Disciplinary Counsel v. Campbell*, 342 A. 2d 616 (Penn. 1976), cert. denied, 424 U.S. 926 (1976). We have found no authority for the proposition that the standard of proof in disciplinary proceedings should be beyond a reasonable doubt. Authority does exist for the proposition that proof by clear and convincing evidence is a proper standard. *In Re Fischer*, 179 F. 2d 361 (7th Cir., 1950), cert. denied, 340 U.S. 825 (1950). *In Re Ryder*, 263 F. Supp. 360 (E.D. Va. 1967), affirmed 381 F. 2d 713 (4th Cir., 1967).

Plaintiff's other contentions that the Kansas Supreme Court Rules are constitutionally deficient are similarly without merit. This Court cannot agree that the Kansas Supreme Court based its disciplinary action on charges that Plaintiff did not have notice of or opportunity to rebut. Plaintiff was given notice of the charges against him and he extensively answered, briefed, and argued each point of contention. Neither can the Court agree that the consideration of Phelps' past disciplinary conduct consti-

tuted a denial of due process, equal protection, or any other constitutional right. *In Re Echeles*, supra, *State v. Hoover*, 574 P. 2d 1377 (Kans. 1978), *Silver v. State Bar*, 528 P. 2d 1157 (Cal. 1974).

As stated above, the essential requirements of any disbarment proceedings are notice and opportunity to be heard. *In Re Echeles*, supra. The minimum standards which must be observed in proceedings to revoke or suspend a license to practice law are not identical to nor necessarily as strict as criminal proceedings. *In Re Echeles*, supra, at page 352. Similarly a disciplinary proceeding is not a full-blown trial and the attorney need not be provided with all of the protections of a trial. *Mildner v. Gulotta*, supra, *Javits v. Stevens*, 382 F. Supp. 131, (D.C. N.Y. 1974), *State v. Turner*, 217 Kan. 575 (1975).

Weighing the three interests to be balanced under a *Mathews v. Eldridge*, supra, test, the Court finds that the Kansas Supreme Court disciplinary rules meet constitutionally required standards. They sufficiently protect the attorney's interest in practicing law through hearings that minimize the risk of an erroneous deprivation of such interest, while recognizing the public interest in the regulation of the legal profession. *Theard v. U.S.*, supra.

There are other reasons that the relief requested by the Plaintiff cannot be granted. Injunctive relief is an extraordinary remedy and should be granted only under special circumstances. *Checker Motors Corp. v. Chrysler Corp.*, 405 F. 2d 319 (2d Cir. 1969), cert. denied, 394 U.S. 999 (1970), *Goldammer v. Fay*, 326 F. 2d 268 (10th Cir. 1964), *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Co.*, 363 U.S. 528 (1960). The granting of injunctive relief is within the sound discretion of the trial judge. *Hecht v. Bowles*, 321 U.S. 321 (1944), *Lemon v. Kurtzman*, 411 U.S. 192 (1973).

Federal courts do have the ability to enjoin state court mandates under 42 U.S.C. § 1983 as an exception to the general prohibition to federal courts enjoining state courts under 28 U.S.C. § 2283, *Mitchum v. Foster*, 407 U.S. 225 (1972), *Henry v. First National Bank of Clarksdale*, 595 F. 2d 291 (1979), but this is not a situation where it would be proper for this Court to grant such relief. Federal courts should not enjoin the actions of the state courts unless it is absolutely necessary that they do so. *Stefanelli v. Minard*, 342 U.S. 117 (1951), *Rizzo v. Goode*, 423 U.S. 362 (1976).

We recognize that the punishment of absolute disbarment is extremely severe, but the Supreme Court of Kansas justified its severity by noting that Plaintiff had previously been suspended. The evidence establishes that past misconduct, which the Kansas Supreme Court had a right to consider as one of many factors before imposing discipline. *Resner v. State Bar of California*, 349 P. 2d 67 (1960). Discipline of lawyers is a matter clearly within the province of the state courts before which the attorneys are licensed to practice. As such the federal courts must exercise restraint in enjoining the disciplinary rules of the state courts. *Younger v. Harris*, 401 US 37 (1971), *Huffman v. Pursue Ltd.*, 420 US 592 (1975), *Rizzo v. Goode*, supra, 423 US 362 (1976). To do otherwise would deny the states the integrity, effectiveness, and traditional autonomy of the sovereign court systems. *Erdmann v. Stevens*, 458 F. 2d 1205 (2nd Cir., 1972), cert. denied, 409 US 889 (1972), *Theard v. U.S.*, supra, and *Cohen v. Hurley*, 366 US 117 (1961).

Equitable relief should also be denied if the complainant has failed to exhaust his legal remedies. *Beacon Theatre Inc. v. Westover*, 359 US 500 (1959). Plaintiff had an adequate remedy at law at the time this case was filed.

Kansas disciplinary procedures are original actions in the Kansas Supreme Court. Rule 212 Discipline of Attorneys, 224 Kan. lxxxvi, Rule 9.01 Appellate Practice, 224 Kan. xl. As such, Plaintiff could have filed a motion for a rehearing or modification of the Order of Disbarment within 20 days. Rule 7.06 Appellate Practice, 224 Kan. xvii. This would have stayed the order pending the outcome of the issues on review.

In addition, Plaintiff had the right under 28 U.S.C. §1257(2) or 28 U.S.C. §1258(3) to petition the Supreme Court of the United States to take the case on appeal or upon writ of certiorari. Plaintiff has failed to exhaust his legal remedies. For the above reasons, the relief requested by the Plaintiff is inappropriate.

The parties having submitted the case to the Court on the merits based on the documents heretofore filed in the action; it is hereby

ORDERED that for the reasons stated above, the Defendants' motion to dismiss is hereby granted; it is further

ORDERED that Plaintiff's Renewed Motion for Stay, Motion for Preliminary Injunction, and Motion for Certification of Class be, and the same hereby is, denied.

Dated this 29th day of October, 1979.

/s/ (Illegible)
United States District Judge

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
No. 79-1381

FRED W. PHELPS, SR.,
Plaintiff,

vs.

THE KANSAS SUPREME COURT, et al.,
Defendants.

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

(Filed December 10, 1979)

Upon reading and considering the Plaintiff's Motion to Alter or Amend Judgment, and for Clarification, and the Defendants' Reply to Plaintiff's Motion to Alter or Amend Judgment, the Court finds that oral argument of said motion is not required, and further finds:

(1) The Court was well aware of this being a civil rights action. It nonetheless is still of the opinion that Plaintiff's real and underlying purpose was to overturn the proceedings of the Kansas Supreme Court. The sentence referred to by counsel on Page 3 of the motion is taken out of context and needs no further clarification.

(2) The Court is of the view that the sentence in its Order of October 31, 1979, quoted on Page 5 of the Plaintiff's motion is correct and that Plaintiff's other contentions are in fact devoid of any merit.

(3) There is no reason to reconsider the Court's decision of October 31, 1979. The matters referred to in Plaintiff's motion were considered by this Court and deemed

to be without merit. Despite Plaintiff's complaints, we believe that the Plaintiff received a fair hearing before the hearing panel and the Supreme Court of Kansas. Even in a criminal proceeding a defendant is not entitled to a perfect hearing, but only one that observes the fundamental fairness essential to the concept of justice. *Lisbenda v. California*, 314 U.S. 219 (1941). The Plaintiff's hearing before the Supreme Court of Kansas met that standard of fundamental fairness.

(4) The Order granting Motion for Preliminary Injunction in Part and Denying the Balance Thereof, dated August 17, 1979, expired with the entry of the Order of October 31, 1979. It should be formally terminated. Therefore, it is

ORDERED that Plaintiff's Motion to Alter or Amend Judgment and for Clarification be denied, and that the Order Granting Motion for Preliminary Injunction in Part and Denying the Balance Thereof be terminated and revoked.

Dated this 7th day of December, 1979.

/s/ (Illegible)
United States District Court

APPENDIX "D"

Rules Relating to the Admission, Discipline and Disbarment of Attorneys, Kansas Supreme Court Rules 201-231, (adopted July 9, 1976, repealed January 8, 1979)

PREFATORY RULE

(a) Repeal of Former Rules. Rules 201 through 215 inclusive, are hereby repealed.

(b) The following Rules, 201 through 230 inclusive, shall be effective October 1, 1976. The Code of Professional Responsibility, previously Rule 501, as amended, remains in effect and is renumbered as Rule 231.

(c) Any disciplinary investigation pending on the effective date of these Rules shall be transferred to the Disciplinary Administrator for further action in accordance with Rules relating thereto.

(d) Any proceeding in which a formal hearing has been commenced shall be concluded under the procedure existing prior to the effective date of these Rules.

Rule 201 JURISDICTION

(a) Any attorney admitted to practice law in this state and any attorney specially admitted by a court of this state for a particular proceeding is subject to the disciplinary jurisdiction of the Supreme Court and the authority hereinafter established.

(b) Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, or to prohibit any bar association from censuring, suspending or expelling its members from membership.

**Rule 202
GROUNDS FOR DISCIPLINE**

The license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege of practicing law. Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office or the Code of Professional Responsibility now set forth in Rule 231 hereof, or as hereinafter amended, shall constitute misconduct and shall be grounds for discipline, whether or not the acts or omissions occurred in the course of an attorney-client relationship.

A certificate of a conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against said attorney based upon the conviction.

**Rule 203
TYPES OF DISCIPLINE**

- (a) Misconduct shall be ground for:
 - (1) Disbarment by the Supreme Court; or
 - (2) Suspension by the Supreme Court; or
 - (3) Public censure by the Supreme Court; or
 - (4) Private informal admonition by the Disciplinary Administrator; or
 - (5) Any other form of discipline the Supreme Court deems appropriate.

(b) Temporary Suspension by the Supreme Court. The Supreme Court may, on its own motion or on motion of the Board of Law Examiners, issue a citation directing an attorney against whom disciplinary proceedings are pending to appear before the Court and show cause why his license to practice law should not be suspended during the pendency of such proceedings and, after hearing, the Court may enter an order suspending his license for a definite or indefinite period or may discharge the order to show cause.

**Rule 204
STATE BOARD OF LAW EXAMINERS**

(a) The Supreme Court shall appoint a nine-member board to be known as the State Board of Law Examiners (hereinafter referred to as the Board), which shall consist of:

- (1) Three members of the bar of this state appointed for an initial term of three years;
- (2) Three members of the bar of this state appointed for an initial term of two years; and
- (3) Three members of the bar of this state appointed for an initial term of one year.

Subsequent terms of all members shall be for three years. No member shall serve for more than two consecutive three-year terms. Vacancies shall be filled by the Supreme Court.

(b) The Supreme Court shall designate one member as chairman and another as vice-chairman. The chairman shall appoint a secretary.

(c) The Board shall act only with the concurrence of a majority of those present and eligible to vote.

(d) Members of the Board shall be paid such sum as the Supreme Court may from time to time fix and they shall be reimbursed for their travel and other expenses incidental to the performance of their duties.

(e) Board members shall refrain from taking part in any proceeding in which a judge similarly situated would be required to abstain.

(f) The Board shall exercise the powers and perform the duties conferred and imposed upon it by these Rules, including the power and duty to assign periodically three of its members as a review committee to review and approve or modify recommendations by the Disciplinary Administrator for dismissals, informal admonitions and institution of formal charges. The members of the review committee shall not participate in any final hearing by the Board, or by a hearing panel appointed by it, on any complaint they have reviewed.

(g) The Board shall exercise the powers and perform the duties relative to admission to the bar as hereinafter stated.

(h) The Board may adopt rules for its procedure not inconsistent with Rules set forth herein.

Rule 205 DISCIPLINARY ADMINISTRATOR

(a) A Disciplinary Administrator shall be appointed by the Supreme Court and serve at the pleasure of the Court. The Disciplinary Administrator shall receive such salary as may be determined by the Court and be reimbursed for travel and other expenses incidental to his duties.

(b) The Disciplinary Administrator shall not be permitted to engage in private practice except that the Su-

preme Court may fix a reasonable period of transition after appointment.

(c) The Disciplinary Administrator shall have the power and duty:

- (1) With the approval of the Supreme Court to employ and supervise staff needed for the performance of his duties.
- (2) To investigate or cause to be investigated all matters involving possible misconduct called to his attention whether by complaint or otherwise.
- (3) To present all matters involving alleged misconduct to the review committee.
- (4) To file with the Supreme Court certificates of conviction of attorneys for crimes.
- (5) To maintain permanent records of all matters processed and the disposition thereof.
- (6) To perform such other duties as may be conferred and imposed upon him by these Rules.

Rule 206 PROSECUTING ATTORNEY

(a) The Attorney General of the State of Kansas shall be the chief prosecuting officer for the enforcement of these Rules. It shall be his duty:

- (1) To prepare for and prosecute all disciplinary proceedings and proceedings to determine incompetency of attorneys before hearing panels, the Board, and the Supreme Court.
- (2) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to in-

active status because of disability, to cross-examine witnesses testifying in support of such petitions, and to marshal and present available evidence, if any, in opposition thereto.

(b) The Supreme Court may, in its discretion, appoint a special prosecutor in lieu of the Attorney General to prosecute any disciplinary matter.

**Rule 207
GRIEVANCE COMMITTEES**

(a) The Disciplinary Administrator may call upon any local or state bar association grievance committee to investigate or assist in the investigation of any complaint upon such terms and conditions as the Disciplinary Administrator shall direct.

(b) Such grievance committee shall assist the Disciplinary Administrator in investigations and such other matters as may be requested by him.

**Rule 208
DUTIES OF THE BAR AND JUDICIARY**

(a) It shall be the duty of each member of the bar of this state to aid the Supreme Court, the Board, and the Disciplinary Administrator in investigations concerning complaints of unethical practice of law, and to communicate to the Disciplinary Administrator any information he may have affecting such matters.

(b) It shall be the further duty of each member of the bar of this state to report to the Disciplinary Administrator any action, inaction, or conduct, which in his opinion constitutes probable cause for discipline of an attorney or other proceeding under these Rules.

(c) It shall be the duty of each judge of this state to report to the Disciplinary Administrator any action or inaction on the part of an attorney appearing before him, which in the opinion of the judge may constitute cause for discipline or other proceeding under these Rules. Upon receipt of such report, it shall be processed as hereinafter provided for complaints. Nothing herein shall be construed in any manner as limiting the powers of such judge in contempt proceedings.

**Rule 209
REGISTRATION OF ATTORNEYS**

(a) All attorneys, including justices and judges, admitted to the practice of law before the Supreme Court of the State of Kansas, shall annually, on or before the first day of July each year, register with the Clerk of the Supreme Court upon such form as the Clerk shall prescribe; provided that in the year of an attorney's admission to the bar, the attorney shall register within thirty days of the date of admission. At the time of each registration, each registrant shall pay an annual fee in such amount as the Supreme Court shall order.

(b) No registration fee shall be charged to any attorney newly admitted to the practice of law in Kansas until the first regular registration date following admission.

(c) Annually on or before June 1 of each year the Clerk of the Supreme Court shall mail to each individual attorney then authorized to practice law in this state, at his last known office address, a statement of the amount of the registration fee to be paid for the next year. Failure of any attorney to receive a statement from the Clerk shall not excuse the attorney from paying the required fee. Every registrant shall within thirty days of any change of his office address notify the Clerk of such change.

(d) Any attorney who fails to pay the registration fee by August 1 of each year may be suspended from the practice of law in this state as prescribed in subsection (e). It shall be the duty of each member of the judiciary of this state to prohibit any attorney who has been suspended from the practice of law from appearing or practicing in court, and it shall be the duty of each member of the bar and judiciary to report to the Disciplinary Administrator any attempt by any attorney to practice law after suspension.

(e) The Clerk of the Supreme Court shall mail a notice to any attorney who has failed to comply with Rule 209 (a) that his right to practice law will be summarily suspended thirty days following the mailing of notice if such registration fee is not paid within that time. The notice shall be forwarded to his last known address by certified mail, return receipt requested. The Clerk shall certify to the Court names of Attorneys who fail to register and pay said fee within said period of time and thereupon the Court shall issue an order suspending said attorneys from the practice of law in this state. No notice shall be mailed and no order of suspension issued to any attorney who has complied with subsection (j) hereof.

(f) An attorney whose authority to practice law in this state has ceased solely because of his failure to register and pay the annual registration fee may be reinstated by the Court upon application by such attorney and the payment by such attorney of all delinquent registration fees (except back fees may be waived for good cause shown), and payment of such additional amount as the Court may require.

(g) The Clerk of the Supreme Court shall issue to each attorney duly registered hereunder a registration card

in a form approved by the Court, evidencing such annual registration.

(h) All moneys collected as registration fees hereunder shall be deposited by the Clerk of the Supreme Court in a bar disciplinary fee fund. Disbursements from such fund shall be made only upon voucher signed by a member of the Court or by some person or persons duly authorized by the Court, and such disbursements shall be made only to defray the cost and expense of administering the registration procedure established hereunder and the disciplinary procedures carried on pursuant to the Rules of the Court.

(i) An attorney appearing in any action or proceeding in this state solely in accordance with the provisions of Rule 116 of the Supreme Court shall not be subject to registration hereunder.

(j) An attorney who has retired or is not engaged in practice in this state may so notify the Clerk of the Supreme Court in writing. Upon the filing of such notice, the attorney shall not be eligible to practice law in this state until such time as he shall make application and be reinstated by the Court as provided in Rule 209 (f). Any such attorney shall be relieved from the payment of the annual registration fee during the period of retirement or inactive status; provided, any attorney whose retirement or inactive status has extended over a period of five years shall not be reinstated until such time as he complies with any conditions imposed by the Court for reinstatement.

Rule 210 COMPLAINTS

All complaints or reports relating to misconduct of any attorney or to the unethical practice of law shall

be filed with the Disciplinary Administrator. Any complaints or reports filed with the Board or any member thereof, the Clerk of the Supreme Court, any state or local bar grievance committee, or any other body shall be immediately delivered to the Disciplinary Administrator. The Disciplinary Administrator shall promptly docket all complaints or reports received.

Rule 211 INVESTIGATIONS

(a) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by the Disciplinary Administrator or under his supervision.

(b) The Disciplinary Administrator may refer a complaint or report to the State Bar Association Grievance Committee, a local bar association grievance committee or any member thereof for investigation and report. The Disciplinary Administrator may at any time withdraw such referral and have the complaint or report otherwise investigated.

(c) Upon the conclusion of an investigation, the Disciplinary Administrator shall recommend to the review committee dismissal of the complaint, informal admonition of the attorney concerned, or the prosecution of formal charges before a hearing panel. Disposition shall thereupon be made by a majority vote of the review committee, unless it directs further investigation.

Rule 212 FORMAL HEARINGS

(a) Hearings shall be conducted by a panel of three attorneys, at least two of whom shall be members of the Board. Hearings may be held at any place in the state. The chairman of the Board shall designate the members

of the panel, the presiding officer thereof, and the matters to be heard by the panel. The presiding officer shall be a member of the Board.

(b) Formal disciplinary proceedings shall be instituted by the Disciplinary Administrator by filing a complaint with the secretary of the Board. The complaint shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the complaint shall be served upon the respondent. The respondent shall serve an answer upon the Disciplinary Administrator within twenty days after the service of the complaint unless such time is extended by the Disciplinary Administrator or the hearing panel.

(c) Following the service of the answer, or upon respondent's failure to answer, the matter shall be set for hearing by the presiding officer of the panel.

(d) The Disciplinary Administrator shall serve a notice of hearing upon the respondent, counsel, and the complaining parties, stating the date and place of the hearing at least fifteen days in advance thereof. The notice of hearing shall state that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

(e) At all hearings witnesses shall be sworn and a complete record made of all proceedings had and testimony taken, either by stenographic means or by electronic recording.

(f) If the hearing panel's report does not recommend discipline, the report shall be filed with the secretary of the Board and the Disciplinary Administrator. The Disciplinary Administrator shall notify the respondent and the complainant of the action taken. If the panel by unanimous vote recommends discipline, the complaint and

the report shall be forthwith filed with the Clerk of the Supreme Court. If not unanimous, the record of the hearing and the report shall be reviewed by the Board. If the Board recommends discipline, its recommendation, together with the complaint and panel report, shall be filed with the Clerk of the Court. If the Board does not recommend discipline the report of the Board shall be filed with the Disciplinary Administrator, who shall notify the respondent and complainant of the action taken.

Rule 213

PROCEEDINGS BEFORE THE SUPREME COURT

(a) All disciplinary proceedings filed in the Supreme Court shall be conducted in the name of the State of Kansas by the Attorney General of the State of Kansas, or by a special prosecutor appointed by the Court.

(b) Cases for hearing before the Supreme Court shall be filed with the Clerk of the Supreme Court and shall contain a copy of the complaint and respondent's answer, together with fifteen copies of the panel's report and fifteen copies of the Board's recommendation, if any; thereupon, the matter shall be docketed by the Clerk as:

IN THE SUPREME COURT OF THE STATE OF KANSAS

State of Kansas,) No.
v.) Original Proceedings
Attorney, Respondent.) in Discipline

The complaint, answer, report, findings and recommendation of the hearing panel, recommendation of the Board, if any, and transcript, if any, shall constitute the record in the case.

(c) Upon docketing of said case the Clerk of the Supreme Court shall mail a copy of the report to the respon-

dent, and shall issue a citation directing the respondent to file with the Clerk either (1) a statement that respondent does not wish to file exceptions to the report, findings, and recommendation, or (2) respondent's exceptions to the report. If respondent's address is unknown and a copy of said report and citation cannot be served upon said respondent, the matter shall stand submitted on the merits upon the filing of a certificate by the Clerk disclosing such facts.

(d) If the respondent fails to file exceptions to the report within twenty days after receipt thereof the Supreme Court shall fix a time and place for the imposition of discipline and the Clerk shall notify the respondent by registered or certified mail of such time and place. The respondent shall appear in person and may be accompanied by counsel and may make a statement with respect to the discipline to be imposed. Thereafter, the Court shall impose such discipline as may be deemed proper and just.

(e) If the respondent files exceptions the following steps shall be taken:

- (1) The Clerk of the Supreme Court shall immediately cause a transcript of the record of the proceedings before the panel to be prepared and filed and a copy to be served upon respondent. Such transcript shall be part of the record and both the state and respondent may refer thereto in their respective briefs, setting forth with particularity the pages of transcript where the material referred to may be found.
- (2) The respondent shall have thirty days from service of the transcript to file a brief.

- (3) Upon the filing of respondent's brief, the Attorney General or special prosecutor shall have thirty days in which to file his brief, and respondent shall have ten days after filing of the brief of the Attorney General or the special prosecutor to file a reply brief. The briefs shall be of such number and form and be served in such manner as is provided by the Rules relating to appeals in civil actions.
- (4) If after thirty days from the service of the transcript upon respondent, he fails to file a brief, he will be deemed to have conceded that the findings of fact made by the hearing panel are supported by the evidence.
- (5) The matter shall be set for hearing and heard on the merits.

Rule 214

REFUSAL OF COMPLAINANT TO PROCEED

Neither unwillingness or neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement or compromise between the complainant and the attorney, nor restitution by the attorney shall justify abatement of any complaint.

Rule 215

MATTERS INVOLVING RELATED PENDING CIVIL OR CRIMINAL LITIGATION

Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending civil or criminal litigation, unless authorized by a review committee or hearing panel.

Rule 216 SERVICE

(a) Service upon the respondent of the complaint in any disciplinary proceeding shall be made by the Disciplinary Administrator either by personal service or by certified mail at the address shown on his most recent registration.

(b) Service of any other papers or notices required by these Rules shall, unless otherwise provided, be made in accordance with K. S. A. 60-205 as amended.

Rule 217

SUBPOENA POWER, WITNESSES AND PRETRIAL PROCEEDINGS

(a) The chairman of the Board, any member of a hearing panel, or the Clerk of the Supreme Court, acting under these Rules, may administer oaths and affirmations and, subject to the Rules of Civil Procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents. A respondent may, subject to the Rules of Civil Procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents before a hearing panel after formal disciplinary proceedings are instituted. Subpoenas shall clearly indicate that they are issued in connection with a confidential investigation under these Rules, and a breach of the confidentiality of the investigation by the person subpoenaed constitutes contempt of the Supreme Court. A person subpoenaed may consult with his attorney without committing a breach of confidentiality.

(b) The judge of the district court of any judicial district in which the attendance or production is required shall, upon proper application, enforce the attendance and testimony of any witness and the production of any docu-

ments so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the district court.

(c) The Disciplinary Administrator in making investigations under these Rules is authorized to issue subpoenas and administer oaths.

(d) Upon request, the Disciplinary Administrator shall disclose to the respondent all evidence in his possession relevant to the proceeding. No other discovery shall be permitted.

(e) At the discretion of the hearing panel a prehearing conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the chairman of the panel or any member of the panel designated by its chairman.

(f) With the approval of the hearing panel, a deposition may be taken by stenographic means or by electronic recording as provided in K. S. A. 60-230 as amended if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.

(g) The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Rule 223.

Rule 218

DISBARMENT BY CONSENT OF ATTORNEY UNDER DISCIPLINARY INVESTIGATION

An attorney who, pending investigation of misconduct or while charges of misconduct against him are pending, voluntarily surrenders his license to practice law in this state or elsewhere, shall have his name stricken from the

roll of attorneys and the pending disciplinary proceedings shall terminate. When an attorney surrenders his license or is disbarred, the Clerk of the Supreme Court shall, by letter directed to the Clerks of the Supreme Courts of any other states and to federal courts in which it is known by the Clerk that the attorney is licensed to practice law, notify said Clerks of the prior proceedings in discipline in this state and the fact his name has been stricken from the roll of attorneys licensed to practice law in Kansas.

Rule 219

DISBARRED OR SUSPENDED ATTORNEYS

In the event any attorney licensed to practice law in Kansas shall hereafter be disbarred or suspended from the practice of law pursuant to these rules, or shall voluntarily surrender his license, such attorney shall forthwith notify each client or person represented by him in pending matters, of his inability to undertake further representation of such client after the effective date of such order, and shall also notify such client to obtain other counsel in each such matter. As to clients involved in pending litigation or administrative proceedings, such attorney shall also notify the appropriate court or administrative body, along with opposing counsel, of such inability to further proceed, and shall file appropriate motion to withdraw as counsel of record where necessary.

Rule 220

REINSTATEMENT

(a) Any attorney who shall have been disbarred or suspended may, by verified petition, apply for an order of reinstatement. Such petition shall bear the case number and caption appearing in the order of discipline, and an original and one copy thereof shall be filed with the Clerk of the Supreme Court. Such petition shall set forth facts

showing that the attorney has rehabilitated himself or that he is entitled to have the order of discipline vacated, terminated or modified.

(b) On receipt of such petition, the Clerk of the Supreme Court shall immediately forward a copy thereof to the Disciplinary Administrator, and the Board shall thereafter promptly consider the same and report to the Court in duplicate its findings, conclusions and recommendation. The proceeding shall be governed by the applicable provisions of the Rules governing hearings in disciplinary proceedings. The Clerk, on receipt of such report, shall mail a copy thereof to the respondent.

(c) If the report of the Board recommends denial of the petition, the attorney shall have fifteen days from the date of mailing of such recommendation to file with the Clerk of the Supreme Court exceptions thereto; whereupon, the matter shall stand submitted. If the report recommends reinstatement the matter shall stand submitted for consideration. Neither briefs nor oral argument shall be permitted unless requested by the Court. The Court may impose appropriate conditions for reinstatement.

Rule 221

PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED

(a) Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of the Court. A copy of such order shall be served upon such attorney, his guardian, and the director of any institution

to which he is committed in such manner as the Court may direct.

(b) When the Board petitions the Supreme Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate. If, upon due consideration, the Court concludes the attorney is incapacitated from continuing to practice law, it shall enter an order transferring said attorney to disability inactive status on the ground of such disability for an indefinite period and until the further order of the Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance.

The Court shall provide for notice to the respondent of such proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if he is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent contends he is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for him to adequately defend himself the Court shall thereupon enter an order immediately, transferring the respondent to disability inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of (b) above.

If the Court shall at any time determine the respondent is not incapacitated from practicing law, it shall take such

action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

(d) The Clerk of the Supreme Court shall promptly transmit a certified copy of the order of transfer to disability inactive status to the administrative judge of the judicial district in which the disabled attorney maintained his practice and shall request such action under the provisions of Rule 222 as may be indicated in order to protect the interests of the disabled attorney and his clients.

(e) No attorney transferred to disability inactive status under the provisions of this Rule may resume active status until reinstated by order of the Supreme Court. Any attorney transferred to disability inactive status under the provisions of this Rule shall be entitled to petition for reinstatement to active status once a year or at such shorter intervals as the Court may direct in the order transferring the respondent to disability inactive status or any modification thereof. Such petition shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon receipt of the petition, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed, including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to disability inactive status by an order in accordance with the provision of (a) above and, thereafter, in a proceeding duly taken, the attorney has been judicially declared to be competent, the Court may dispense with further evidence that

the attorney's disability has been removed and may direct the attorney's reinstatement to active status upon such terms as are deemed proper and advisable.

(f) In a proceeding seeking a transfer to disability inactive status under this Rule, the burden of proof shall rest with the petitioner. In a proceeding seeking an order of reinstatement to active status under this Rule, the burden of proof shall rest with the respondent.

(g) The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of the attorney's disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since the attorney's transfer to disability inactive status and he shall furnish to the Court written consent to each to divulge such information and records as requested by court-appointed medical experts.

Rule 222

APPOINTMENT OF COUNSEL TO PROTEST CLIENTS' INTERESTS

(a) When an attorney has been transferred to disability inactive status because of incapacity or disability, or the attorney has disappeared or died, or has been suspended or disbarred and there is evidence the attorney has not complied with Rule 219 or it appears the affairs of his clients are being neglected, the administrative judge of the judicial district in which the attorney maintained his practice shall appoint an attorney or attorneys to inventory the files of the inactive, disappeared, deceased, suspended or

disbarred attorney and with the approval of the judge take such action as seems necessary to protect the interests of the attorney and the attorney's clients.

(b) Any attorney so appointed shall not disclose any information contained in any files so inventoried except as necessary to carry out the order of the district court.

Rule 223
CONFIDENTIALITY

(a) All proceedings, reports and records of disciplinary investigations and hearings other than proceedings before the Supreme Court shall be private and shall not be divulged in whole or in part to the public except by order of the Court.

(b) Any person violating paragraph (a) may be subject to punishment for contempt of Court.

Rule 224
IMMUNITY

Complaints, reports, or testimony in the course of disciplinary proceedings under these Rules shall be deemed to be made in the course of judicial proceedings. All participants shall be entitled to all rights, privileges and immunities afforded public officials and other participants in actions filed in the courts of this state.

Rule 225
ADMISSION TO THE BAR

(a) Applicants of good moral character and the requisite general education who are residents of the State of Kansas, who have complied with the Rules of the Supreme Court and of the State of Kansas, being graduates of the law department of the University of Kansas or some other accredited law school of equal requirements and reputa-

tion, will be admitted to examination in the law at such times as examinations shall be held by the Board. *Provided, That a resident of another state who has been graduated from an accredited law school in this state may be admitted to the first or second examination held by the Board after such graduation.*

(b) The Board shall conduct examinations of applicants for admission to the bar, and shall conduct such *preliminary inquiries and investigations as may be necessary or proper to determine the qualifications of applicants to be examined and to be admitted.* The Board shall be satisfied that all such applicants are (1) of good moral character, and (2) possessed of the requisite general education. Examinations shall be held regularly by the Board two times each year at dates to be determined by the Board, and subject to the prior approval of the Court. Special examinations may be held at the discretion of the Board.

(c) Any practicing attorney of any state or territory having professional business in the Supreme Court may be admitted for the time and purpose of such business upon taking the oath hereinafter set out, or such attorney may be heard by permission of the Court, on motion, without formal admission.

(d) All applications for admission to the bar shall be by petition to the Supreme Court, in duplicate, and filed with the Clerk of the Court at least ninety days prior to the next ensuing examination. Every petition shall be made on forms to be procured from the Clerk, shall be verified by the applicant, shall state his full name, the date and place of his birth, the facts showing his citizenship, the state of his residence, and such other information as may be required to complete the petition.

In addition to the foregoing, each applicant for admission to the bar as provided by Rule 225(i) shall file with the Clerk, in duplicate, his answers to a questionnaire to be procured from the Clerk, showing his educational qualifications, his study of the law, the date or dates of his admission to the bar of the highest court of another jurisdiction, occupations and employments in which he has been engaged and their locations, and other information elicited on the questionnaire. Every applicant for admission to the bar will also be required to produce and file with his petition a written certificate signed by a judge of the district court and three members of the bar of the county where he resides or has lately resided, or other evidence satisfactory to the Board that he is a person of good moral character.

No applicant for admission to the bar shall be examined until his application has been considered and approved by the Board.

Prior to granting approval to take the bar examination, it shall be the duty of the Board to investigate the moral character of each applicant, and it may call upon any state or local bar association or one or more members of the bar of the judicial district where the applicant resides, to make such investigation and report the results to the Board, and it may make such further investigation as may be necessary to fully inform itself concerning the moral fitness of the applicant.

The Board may require an applicant to submit fingerprints. In no event will permission be granted to take the bar examination until the investigation as to moral character has been completed. In every investigation the Board may obtain such information as bears upon the character, fitness and general qualifications of the candidate, take and hear testimony, administer oaths and af-

firmations, and compel by subpoena at the request of the applicant or of the Board, the attendance of witnesses and the production of books, papers and documents. Any member of the Board may administer such oaths and affirmations. The practice of law is a privilege and the burden of establishing his eligibility shall rest upon the applicant.

(e) Upon the filing of a petition, the Clerk shall immediately send to the Disciplinary Administrator one of the duplicates, and shall post the name and address of the applicant in a conspicuous place in his office for a period of sixty days.

(f) Applicants will be required to pass a satisfactory examination as to their learning in the law upon such of the following, or other subjects, as the Board may require: Personal property, domestic relations and family law, noncorporate business organizations and voluntary associations, agency and employment, U. C. C. and commercial transactions, legal ethics, contracts, corporations, real property, constitutional law, criminal law, civil and criminal procedure, torts, wills, trusts and administration, and evidence.

(g) At every examination each applicant shall draw a number on a slip of paper on which he shall write his name and deposit it in a sealed envelope with the Clerk of the Supreme Court. When the applicant shall have finished any book, he shall sign it with his number only and mark it as directed by the Board, and any other mark of identification placed upon the book shall disqualify it, and the Board may refuse to read or consider it.

(h) As soon as practicable after the completion of an examination, the Board shall file a report with the Clerk of the Supreme Court recommending the granting or the denial of the petition of the applicant. When such report recommends the granting of a petition, unless some

reason appears to the contrary, the Court will make an order admitting the applicant to practice in all the courts of the state, which order shall become effective upon his taking an oath, the form of which shall be in substance as follows:

"You do solemnly swear that you will support and bear true allegiance to the Constitution of the United States and the Constitution of the State of Kansas; that you will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit; that you will neither do, nor consent to the doing of any falsehood in court; and that you will discharge your duties as an attorney and counselor of the Supreme Court and all inferior courts of the State of Kansas with fidelity both to the court and to your cause, and to the best of your knowledge and ability. So help you God."

Upon the making of such order the Clerk shall issue to each applicant a certificate of his authority to practice law in this and all inferior courts of the state, upon his signing his name on the roll of attorneys of the Court. When the Board recommends a denial of the petition, an order will be made to that effect.

Provided further, however, the authority granted to practice law shall not be exercised except as provided under Rule 116 when the licensee herein has been admitted to the bar of another state or territory and is regularly engaged in the practice of law in such other state or territory.

(i) Any applicant for admission to the bar of Kansas who was duly admitted to the practice of law by the highest court of another jurisdiction, who practiced there

continuously for a period of five years, and continued to practice there or elsewhere until within six months of making application for admission here, may be admitted to practice in this state without written examination as to his learning in the law upon showing by his application made in accordance with Rule 228 (2):

- (1) That he is or will become a bona fide resident of the State of Kansas prior to the time he is admitted to the bar of Kansas;
- (2) That at the time he was first admitted in another jurisdiction he was fully qualified to have taken the bar examination in this state under the Rules of the Supreme Court then in effect;
- (3) That he is now and has been a person of good moral character and is a proper person to be admitted to the bar of Kansas; and
- (4) That he will furnish to the Board such other and further information as it may require in the consideration of his application.

Upon final consideration of the application the Board will report in writing to the Supreme Court its recommendation as to whether the applicant shall be admitted.

All such applicants shall present themselves before the Board at its preliminary meeting preceding the regular semi-annual meeting at which they seek admission under this Rule.

(j) Any applicant for admission to the bar who is a graduate of an approved law school or who has been admitted to practice in the highest court of any other state, may, pending the hearing of his application, also file with the Clerk of the Supreme Court a request for a temporary permit to practice law. If the Court shall

find the applicant has had no opportunity to take an earlier examination, and that the circumstances are such to justify it, a temporary permit will be granted, expiring at the date the results of the next examination are announced if unsuccessful, or if successful on the date he is regularly admitted to the bar, or until the date application under Rule 225 (i) is acted upon the Court, effective upon his taking an oath to support the Constitution of the United States, and the Constitution of the State of Kansas, and to conform to the requirements of the attorney's oath prescribed by the Rules of the Court.

(k) In the event the Board shall recommend denial of an application filed under Rule 225 (i), a copy of the Board's report shall be furnished the applicant. The applicant may, within ten days or such other period as the Supreme Court might prescribe, file with the Clerk of the Court his exceptions to the Board's report or he may elect to make no filing.

(l) Upon receipt of a copy of the exceptions of the applicant, the Board shall file such additional material as it might deem appropriate, whereupon the matter shall stand submitted and the Supreme Court shall proceed to consider the matter.

(m) Registration costs referred to in Rule 228 shall constitute a fund to be known as the bar admission fee fund. Disbursements for compensation and expenses in connection with admissions shall be from this fund. Any unused balance may be applied to any deficiency in the bar disciplinary fee fund.

(n) Any applicant denied admission to the bar because of failure to make a satisfactory grade as a result of taking the examination provided in subparagraphs (f) and (g), shall have the right to inspect his examination papers at the office of the Clerk of the Supreme Court

if such a request is made not later than the thirtieth day after the mailing of the notice of denial of admission by the Clerk.

Rule 226 EXPENSES

(a) Each member of the Board shall receive as compensation for his services in the preparation for and the conduct of examinations for admission to the bar, the sum of five hundred dollars per year, and the secretary of the Board shall receive for his services as secretary the additional sum of five hundred dollars per year. All compensation due under this rule shall be paid monthly or in such other manner as shall be provided by law. In addition, each member of the Board shall be paid all actual and necessary expenses incurred in the performance of services for which he receives compensation.

(b) The salaries and expenses of the Disciplinary Administrator and staff, the administrative costs, and the per diem and expenses of the members of the Board, hearing panels and special prosecutors, shall be paid out of the funds collected under the provisions of Rule 209. The Disciplinary Administrator shall annually file a report of receipts and expenditures.

Rule 227 EDUCATIONAL AND MORAL QUALIFICATIONS

(a) Examinations relative to the qualifications of applicants shall be oral or in writing, or partly oral and partly in writing, in the discretion of the Board. They shall include an inquiry into the moral qualifications and general learning of each applicant as well as into his learning in the law. Each applicant shall satisfy the Board that he has completed a full course of study in both an

accredited college and an accredited law school and that he has been granted and holds a baccalaureate degree and a Bachelor of Laws or Juris Doctor degree or their equivalent or higher degrees. A full course of study means the satisfactory completion of the requirements for the baccalaureate degree and the completion of at least six additional semesters, or the equivalent, in an accredited law school. The standard for determining sufficiency of any educational requirement, or of courses of study leading to the granting of the degrees above mentioned, shall be that fixed and recognized by the University of Kansas.

(b) Correspondence schools are not recognized and applicants for admission to the bar will receive no credit for studies in such institutions.

(c) Diplomas showing that the applicant has earned and holds a baccalaureate degree and a Bachelor of Laws or Juris Doctor degree from accredited colleges, universities or schools will be accepted as prima facie evidence that he has complied with all the requirements of Rule 227 (a). A certificate of graduation may be furnished in lieu of such diploma.

(d) In the event it shall be deemed necessary by the Board, as a result of the number of persons taking the examinations or by reason of the absence of one or more members of the Board, the Board may employ or otherwise obtain the services of one or more members of the Kansas Bar to assist the Board in the grading of bar examinations. Compensation for any member so employed shall be that agreed upon between such person and the Board, subject to the prior approval of the Court, and shall be paid from the Board's fund.

Rule 228 APPLICATION COSTS

(a) Excepting applicants under Rule 228 (b) hereof, each applicant shall pay to the Clerk of the Supreme Court the sum of fifty dollars as costs of the proceedings for admission to the bar. If the Board, after investigation, is of the opinion the applicant is not qualified to take the examination, it shall report such fact to the Clerk and fifty percent of the fee accompanying the application shall be returned by the Clerk to the applicant, but if the application is approved by the Board, such fee shall not be returned. If, upon examination by the Board, the petition of the applicant be denied, he may, with the consent of the Board, take a second examination without payment of additional costs, but an additional sum of fifty dollars shall be paid for the third and each subsequent examination.

(b) Each applicant for admission as provided by Rule 225 (i) shall pay to the Clerk of the Supreme Court the sum of two hundred dollars as costs of the proceedings for admission to the bar and shall furnish to the Court such information as the Court may require as to his legal and prelegal education, his reputation, character, and professional standing, and such other matters as the Court may specify, and such information shall be submitted to an investigating body or organization of the Court's selection for investigation of such information and a report thereon to the Court. The applicant shall pay to the Clerk the additional sum of one hundred twenty-five dollars to be applied to the cost of such investigation and report. If the application be denied for any reason, the applicant shall be entitled to a refund of fifty dollars and no more.

Rule 229
LEGAL INTERNS

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted:

(a) Activities.

- (1) Students shall be assigned as legal interns only to those attorneys, agencies and public bodies requesting their services. Requests shall be made to the deans of the respective law schools.
- (2) An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:
 - (i) In any civil matter, other than domestic matters, wherein the amount in controversy is less than \$300, the supervising lawyer is not required to be personally present in court if the person on whose behalf the appearance is being made expressly consents thereto in writing before the court. In all other civil matters the supervising attorney must be present personally throughout the proceedings and be fully responsible for the manner in which they are conducted.

- (ii) Any criminal matter in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or Rule of the Supreme Court. In such cases the supervising lawyer is not required to be personally present in court if the person on whose behalf an appearance is being made expressly consents thereto in writing before the Court.
 - (iii) Any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or Rule of the Court. In such cases the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.
 - (3) An eligible legal intern may also appear in any criminal matter on behalf of the state with the written approval of the prosecuting attorney or his authorized representative supervising the intern.
 - (4) In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.
- (b) Requirements and Limitations. In order to make an appearance as a legal intern pursuant to this rule, the student must:
- (1) Be duly enrolled in this state in an accredited law school, provided that law students who are bona fide residents of Kansas and are enrolled

in an accredited law school may be permitted to act as legal interns in the courts of Kansas on complying with the other provisions of this Rule.

- (2) Have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a semester basis.
- (3) Have filed an application for admission to the bar of this state.
- (4) Be certified by the dean of his law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.
- (5) Be introduced to the court in which he is appearing by an attorney admitted to practice in that court.
- (6) Neither ask for nor receive any compensation or renumeration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent a lawyer, legal aid bureau, public defender agency, or the state, county or municipality from paying compensation to the legal intern, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.
- (7) Certify in writing that he has read and will abide by the Code of Professional Responsibility of the American Bar Association, and also subscribe to an oath that he will support the Constitution of the United States and the State of Kansas, and will faithfully perform the duties of a legal intern. Said certificate and oath are to be filed with the Clerk of the Supreme Court.

(c) Certification. The certification of a student by the law school dean:

- (1) Shall be filed with the Clerk of the Supreme Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen months after it is filed or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar by special examination, the certification shall continue in effect until the date he is admitted to the bar.
 - (2) May be withdrawn by the dean at any time by filing a notice to that effect with the Clerk of the Supreme Court. It is not necessary that the notice state the cause for withdrawal.
 - (3) May be terminated by the Supreme Court at any time without notice or hearing and without any showing of cause. Notice of the termination shall be filed with the Clerk of the Supreme Court and with the dean of the law school in which the student is enrolled.
- (d) Other activities.
- (1) An eligible legal intern may engage in other activities under the general supervision of a member of the bar of this state, but outside the personal presence of that lawyer, including:
 - (i) Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.
 - (ii) Preparation of briefs, abstracts and other documents to be filed in appellate courts of

this state, but such documents must be signed by the supervising lawyer.

- (iii) Assistance to indigent inmates of penal institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute or Rule of the Court. If there is an attorney of record, all such assistance must be supervised by the attorney of record, and all documents submitted to the Court on behalf of such client must be signed by the attorney of record.
- (iv) Each document or pleading must contain the name of the legal intern who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.
- (2) A legal intern may not participate in oral argument in the Supreme Court.
- (e) Supervision. The member of the bar under whose supervision an eligible legal intern does any of the things permitted by this Rule shall:
 - (1) Be an attorney regularly engaged in the practice of law in this state whose service as a supervising lawyer for this program is approved by the dean of the law school in which the student is enrolled.
 - (2) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.
 - (3) Assist the student in his preparation to the extent he considers it necessary.

(4) Have supervision over no more than two legal interns at any one time, provided however, that this limitation shall not apply to full time staff members of recognized state or local legal aid societies, and county attorney, district attorney, municipal attorney, or attorney general offices, and provided further that the limitations of (e) (1) and (e) (4) shall not apply to a law professor regularly engaged in the teaching of law at one of the law schools referred to in (b) (1) who is a licensed attorney of the bar of this state and whose teaching duties include participation in a legal clinic operated as a regular part of the educational program of such law school.

(f) Miscellaneous. Nothing contained in this Rule shall affect the right of any person who is not admitted to practice law to do anything that he might lawfully do prior to the adoption of this Rule.

Rule 230

ADDITIONAL RULES OF PROCEDURE

- (a) Except as otherwise provided in these Rules, time limitations are directory and not jurisdictional.
- (b) Except as otherwise provided, the Rules of Civil Procedure apply in disciplinary cases.
- (c) In all cases where discipline is recommended, the panel or the Board shall certify to the Supreme Court the costs incurred in connection with the proceedings and the Court may, in the event discipline is imposed, assess against the respondent attorney the costs so certified. All costs so assessed shall be paid to the Clerk for deposit in the bar disciplinary fee fund.

Rule 231

CODE OF PROFESSIONAL RESPONSIBILITY

[New Rule Number]

APPENDIX "E"

Rules Relating to Discipline of Attorneys, Kansas Supreme Court Rules 201-225 (effective January 8, 1979)

PREFATORY RULE

(a) Rules Relating to Admission, Discipline and Disbarment of Attorneys, numbers 201 through 230, are hereby repealed. Creation of two boards, one to be known as the Kansas Board for Discipline of Attorneys and the other the Kansas Board for Admission of Attorneys, has necessitated promulgation of separate rules for each Board. Rules Relating to Discipline of Attorneys, beginning with Rule 201, are hereby adopted, effective January 8, 1979. Rules Relating to Admission of Attorneys are also hereby adopted, effective January 8, 1979, and are numbered in the 700 series, beginning with Rule 701.

(b) The Code of Professional Responsibility, previously Rule 231, remains in effect and is renumbered as Rule 225.

Rule 201
JURISDICTION

(a) Any attorney admitted to practice law in this state and any attorney specially admitted by a court of this state for a particular proceeding is subject to the jurisdiction of the Supreme Court and the authority hereinafter established by these Rules.

(b) Nothing herein contained shall be construed to deny to any court such powers as are necessary to maintain control over proceedings conducted before that court.

Rule 202
GROUNDS FOR DISCIPLINE

The license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally in conformity with the standard imposed upon members of the bar as conditions for the privilege of practicing law. Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office as set forth in Rule 702(h), or the Code of Professional Responsibility as set forth in Rule 225 hereof, or as hereinafter amended, shall constitute misconduct and shall be grounds for discipline, whether or not the acts or omissions occurred in the course of an attorney-client relationship.

A certificate of a conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against said attorney based upon the conviction.

Rule 203
TYPES OF DISCIPLINE

- (a) Misconduct shall be ground for:
 - (1) Disbarment by the Supreme Court; or
 - (2) Suspension by the Supreme Court; or
 - (3) Public censure by the Supreme Court; or
 - (4) Informal admonition by the Kansas Board for Discipline of Attorneys or the Disciplinary Administrator; or

(5) Any other form of discipline the Supreme Court deems appropriate.

(b) Temporary Suspension by the Supreme Court. The Supreme Court may, on its own motion or on motion of the Kansas Board for Discipline of Attorneys, issue a citation directing an attorney against whom disciplinary proceedings are pending to appear before the Court and show cause why his license to practice law should not be suspended during the pendency of such proceedings and, after hearing, the Court may enter an order suspending his license for a definite or indefinite period or may discharge the order to show cause.

Rule 204

KANSAS BOARD FOR DISCIPLINE OF ATTORNEYS

(a) The Supreme Court shall appoint a nine-member board to be known as the Kansas Board for Discipline of Attorneys (hereinafter referred to as the Disciplinary Board), which shall consist of:

- (1) Three members of the bar of this state appointed for an initial term of three years;
- (2) Three members of the bar of this state appointed for an initial term of two years; and
- (3) Three members of the bar of this state appointed for an initial term of one year.

Subsequent terms of all members shall be for three years. No member shall serve for more than two consecutive three-year terms. Vacancies shall be filled by the Supreme Court.

(b) The Supreme Court shall designate one member as chairman and another as vice-chairman. The chairman shall appoint a secretary.

(c) The Disciplinary Board shall act only with the concurrence of a majority of those present and eligible to vote. Five members shall constitute a quorum.

(d) Disciplinary Board members shall refrain from taking part in any proceeding in which a judge similarly situated would be required to abstain.

(e) The Disciplinary Board shall exercise the powers and perform the duties conferred and imposed upon it by these Rules, including the power and duty to assign periodically three attorneys, at least two of whom shall be members of the Board, as a review committee to review and approve or modify recommendations by the Disciplinary Administrator for dismissals, informal admonitions, and institution of formal charges. The members of the review committee shall not participate in any final hearing by the Board, or by a hearing panel appointed by it, on any complaint they have reviewed.

(f) The per diem and expenses of the members of the Disciplinary Board, hearing panels, and special prosecutors, shall be paid out of the funds collected under the provisions of Rule 208.

(g) The Disciplinary Board may adopt procedural rules not inconsistent with Rules set forth herein.

Rule 205

DISCIPLINARY ADMINISTRATOR

(a) A Disciplinary Administrator shall be appointed by the Supreme Court and shall serve at the pleasure of the Court. The Disciplinary Administrator and his staff shall receive such salaries as may be determined by the Court and be reimbursed for travel and other expenses incidental to their duties from the funds collected under the provisions of Rule 208. The Disciplinary Administrator

shall annually file a report of receipts and expenditures. The Disciplinary Administrator shall be a member of the bar of the State of Kansas.

(b) Neither the Disciplinary Administrator nor any member of his staff shall be permitted to engage in private practice except that the Supreme Court may fix a reasonable period of transition after appointment.

(c) The Disciplinary Administrator shall have the power and duty:

- (1) To employ and supervise staff needed for the performance of his duties, subject to approval by the Supreme Court.
- (2) To investigate or cause to be investigated, all matters involving possible misconduct, whether called to his attention by complaint or otherwise.
- (3) To present all matters involving alleged misconduct to the review committee.
- (4) To file with the Supreme Court certificates of conviction of attorneys for crimes.
- (5) To maintain permanent records of all matters processed and the disposition thereof.
- (6) To prepare for and prosecute all disciplinary proceedings instituted to determine misconduct of attorneys before hearing panels, the Disciplinary Board, and the Supreme Court.
- (7) To appear at hearings conducted with respect to petitions for reinstatement of (aa) suspended or disbarred attorneys, or (bb) attorneys transferred to inactive status because of disability; to cross-examine witnesses testifying in support of the petitions and to present any available evidence in opposition thereto.

(8) To perform such other duties as may be conferred and imposed upon him by the Supreme Court.

Rule 206

GRIEVANCE COMMITTEES

(a) The Disciplinary Administrator may call upon any member of the bar of this state or any local or state bar association grievance committee to investigate or assist in the investigation of any complaint upon the terms and conditions the Disciplinary Administrator shall direct.

(b) The members of the bar or grievance committees shall assist the Disciplinary Administrator in investigations and such other matters as may be requested of them.

Rule 207

DUTIES OF THE BAR AND JUDICIARY

(a) It shall be the duty of each member of the bar of this state to aid the Supreme Court, the Disciplinary Board, and the Disciplinary Administrator in investigations concerning complaints of misconduct, and to communicate to the Disciplinary Administrator any information he may have affecting such matters.

(b) It shall be the further duty of each member of the bar of this state to report to the Disciplinary Administrator any action, inaction, or conduct, which in his opinion constitutes misconduct of an attorney under these Rules.

(c) It shall be the duty of each judge of this state to report to the Disciplinary Administrator any act or omission on the part of an attorney appearing before him, which, in the opinion of the judge, may constitute misconduct under these Rules. Upon receipt of such report, it shall be processed as hereinafter provided for complaints. Nothing herein shall be construed in any manner as limiting the powers of such judge in contempt proceedings.

Rule 208
REGISTRATION OF ATTORNEYS

(a) All attorneys, including justices and judges, admitted to the practice of law before the Supreme Court of the State of Kansas shall annually, on or before the first day of July, register with the Clerk of the Appellate Courts upon such form as the Clerk shall prescribe; provided that in the year of an attorney's admission to the bar, the attorney shall register within thirty days after the date of admission. At the time of each registration, each registrant shall pay an annual fee in such amount as the Supreme Court shall order.

(b) No registration fee shall be charged to any attorney newly admitted to the practice of law in Kansas until the first regular registration date following admission.

(c) On or before June 1 of each year the Clerk of the Appellate Courts shall mail to each individual attorney then authorized to practice law in this state, at his last known office address, a statement of the amount of the registration fee to be paid for the next year. Failure of any attorney to receive a statement from the Clerk shall not excuse the attorney from paying the required fee. Every registrant shall within thirty days after any change of his office address notify the Clerk of such change.

(d) Any attorney who fails to pay the registration fee by August 1 of each year may be suspended from the practice of law in this state as prescribed in subsection (e). It shall be the duty of each member of the judiciary of this state to prohibit any attorney who has been suspended from the practice of law from appearing or practicing in any court, and it shall be the duty of each member of the bar and judiciary to report to the Disciplinary Administrator any attempt by an attorney to practice law after his suspension.

(e) The Clerk of the Appellate Courts shall mail a notice to any attorney who has failed to comply with subsection (a) that his right to practice law will be summarily suspended thirty days following the mailing of notice if such registration fee is not paid within that time. The notice shall be forwarded to his last known address by certified mail, return receipt requested. The Clerk shall certify to the Supreme Court the names of attorneys who fail to register and pay said fee within said period of time. Thereupon, the Court shall issue an order suspending said attorneys from the practice of law in this state and the Clerk shall mail a copy of the order to the administrative judge of the attorney's district. No notice shall be mailed and no order of suspension issued to any attorney who has complied with subsection (j) hereof.

(f) An attorney whose authority to practice law in this state has ceased solely because of his failure to register and pay the annual registration fee may be reinstated by the Supreme Court upon application by such attorney and the payment by such attorney of all delinquent registration fees (except back fees may be waived for good cause shown), and payment of such additional amount as the Court may require.

(g) The Clerk of the Appellate Courts shall issue to each attorney duly registered hereunder a registration card in a form approved by the Supreme Court, evidencing such annual registration.

(h) All moneys collected as registration fees hereunder shall be deposited by the Clerk of the Appellate Courts in a bar disciplinary fee fund. Disbursements from such fund shall be made only upon vouchers signed by a member of the Supreme Court or by some person or persons duly authorized by the Court, and such disburse-

ments shall be made only to defray the cost and expense of administering the registration procedure established hereunder and the disciplinary procedures carried on pursuant to the Rules of the Supreme Court.

(i) An attorney appearing in any action or proceeding in this state solely in accordance with the provisions of Rule 116 of the Supreme Court shall not be subject to registration hereunder.

(j) An attorney who has retired or is not engaged in the practice of law in this state may so notify the Clerk of the Appellate Courts in writing. Upon the filing of such notice, the attorney shall not be eligible to practice law in this state until such time as he shall make application and be reinstated by the Supreme Court as provided in subsection (f). Any such attorney shall be relieved from the payment of the annual registration fee during the period of retirement or inactive status; provided, any attorney whose retirement or inactive status has extended over a period of five years shall not be reinstated until such time as he complies with any conditions imposed by the Supreme Court for reinstatement.

Rule 209 COMPLAINTS

All complaints or reports relating to misconduct of any attorney shall be filed with the Disciplinary Administrator. Any complaints or reports filed with the Disciplinary Board or any member thereof, the Clerk of the Appellate Courts, any state or local bar grievance committee, or any other body shall be immediately delivered to the Disciplinary Administrator. The Disciplinary Administrator shall promptly docket all complaints or reports received.

Rule 210 INVESTIGATIONS

(a) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by the Disciplinary Administrator or under his supervision.

(b) The Disciplinary Administrator may refer a complaint or report to the state bar association grievance committee, a local bar association grievance committee, or any member of the bar of this state, for investigation and report. The Disciplinary Administrator may at any time withdraw such referral and have the complaint or report otherwise investigated.

(c) Upon the conclusion of an investigation, the Disciplinary Administrator shall recommend to the review committee dismissal of the complaint, informal admonition of the attorney concerned, or prosecution of formal charges before a hearing panel. Disposition shall thereupon be made by a majority vote of the review committee, unless it directs further investigation. A complaint shall not be referred for panel hearing unless the review committee finds by a majority vote that there is probable cause to believe there has been a violation of the Code of Professional Responsibility or of the Attorney's Oath which may require formal discipline of the respondent.

Rule 211 FORMAL HEARINGS

(a) Hearings shall be conducted by a panel of three attorneys, at least two of whom shall be members of the Disciplinary Board. Hearings may be held at any place in the state. The chairman of the Disciplinary Board shall designate the members of the panel, the presiding officer thereof, and the matters to be heard by the panel.

The presiding officer shall be a member of the Disciplinary Board.

(b) Formal disciplinary proceedings shall be instituted by the Disciplinary Administrator by filing a complaint with the secretary of the Disciplinary Board. The complaint shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the complaint shall be served upon the respondent. The respondent shall serve an answer upon the Disciplinary Administrator within twenty days after the service of the complaint unless such time is extended by the Disciplinary Administrator or the hearing panel.

(c) Following the service of the answer, or upon respondent's failure to answer, the matter shall be set for hearing by the presiding officer of the panel.

(d) The Disciplinary Administrator shall serve a notice of hearing upon the respondent, respondent's counsel, and the complaining parties. The notice shall state that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. The notice shall also state the date and place of the hearing and shall be served at least fifteen days in advance of the hearing date. The hearing shall be governed by the Rules of Evidence as set forth in the Code of Civil Procedure. (Art. 4, Ch. 60, Kansas Statutes Annotated.)

(e) All witnesses shall be sworn and all proceedings and testimony shall be recorded, either by stenographic means or by electronic recording.

(f) At the conclusion of a hearing held by a panel, a report shall be made to the Disciplinary Board setting forth findings and recommendations, which report shall be signed by a majority of the panel and submitted to the Board. To warrant a finding of misconduct the charges must be established by clear and convincing evidence.

A unanimous panel report shall be deemed a final hearing report and shall be filed, served and acted upon as hereinafter provided.

If a panel report is not unanimous, the report, findings and recommendations of the panel shall be reviewed by the Disciplinary Board, exclusive of members who acted on the matter as members of the review committee (see Rule 204 [e]). The Disciplinary Board shall act thereon and make its recommendations which, together with the panel report, shall constitute the final hearing report.

A copy of the final hearing report shall be mailed or delivered by the Disciplinary Administrator to the respondent and to counsel of record.

If the final hearing report does not recommend discipline the report shall be filed with the secretary of the Disciplinary Board and with the Disciplinary Administrator.

If the final hearing report recommends discipline of disbarment, suspension, or public censure, as prescribed by Rule 203(a)(1), (2) or (3), the report, findings and recommendations of the panel and the Disciplinary Board, together with the complaint, answer and transcript, if any, shall be filed with the Clerk of the Appellate Courts and the matter shall proceed as provided by Rule 212.

Rule 212

PROCEEDINGS BEFORE THE SUPREME COURT

(a) All disciplinary proceedings filed in the Supreme Court shall be conducted in the name of the State of Kansas.

(b) Cases for hearing before the Supreme Court shall be filed with the Clerk of the Appellate Courts and shall contain a copy of the complaint and respondent's answer,

together with fifteen copies of the panel's report and fifteen copies of the Disciplinary Board's recommendation, if any, thereupon, the matter shall be docketed by the Clerk as:

IN THE SUPREME COURT OF THE STATE
OF KANSAS

State of Kansas,) No.
v.) Original Proceedings
Attorney, Respondent.) in Discipline

The complaint, answer, report, findings and recommendation of the hearing panel, recommendation of the Disciplinary Board, if any, and transcript, if any, shall constitute the record in the case.

(c) Upon docketing of said case the Clerk of the Appellate Courts shall mail a copy of the report to the respondent, and shall issue a citation directing the respondent to file with the Clerk either (1) a statement that respondent does not wish to file exceptions to the report, findings, and recommendation, or (2) respondent's exceptions to the report. If respondent's address is unknown and a copy of said report and citation cannot be served upon said respondent, the matter shall stand submitted on the merits upon the filing of a certificate by the Clerk disclosing such facts.

(d) If the respondent fails to file exceptions to the report within twenty days after receipt thereof the Supreme Court shall fix a time and place for the imposition of discipline and the Clerk of the Appellate Courts shall notify the respondent by registered or certified mail of such time and place. The respondent shall appear in person and may be accompanied by counsel and make a statement with respect to the discipline to be imposed. There-

after, the Supreme Court shall impose such discipline as may be deemed proper and just.

(e) If the respondent files exceptions the following steps shall be taken:

- (1) The Clerk of the Appellate Courts shall immediately cause a transcript of the record of the proceedings before the panel to be prepared and filed and a copy to be served upon respondent. Such transcript shall be a part of the record and both the state and respondent may refer thereto in their respective briefs, setting forth with particularity the pages of transcript where the material referred to may be found.
 - (2) The respondent shall have thirty days from service of the transcript to file a brief.
 - (3) Upon the filing of respondent's brief, the Disciplinary Administrator or special prosecutor shall have thirty days in which to file a brief, and respondent shall have ten days after filing of the brief of the Disciplinary Administrator or the special prosecutor to file a reply brief. The briefs shall be of such number and form and be served in such manner as is provided by the Rules relating to appeals in civil actions.
 - (4) If, after thirty days from the service of the transcript upon respondent, he fails to file a brief, he will be deemed to have conceded that the findings of fact made by the hearing panel are supported by the evidence.
 - (5) The matter shall be set for hearing and heard on the merits.

Rule 213**REFUSAL OF COMPLAINANT TO PROCEED**

Neither unwillingness or neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement or compromise between the complainant and the attorney, nor restitution by the attorney, nor the voluntary surrender of his license, shall justify abatement of any complaint.

Rule 214**MATTERS INVOLVING RELATED PENDING CIVIL
OR CRIMINAL LITIGATION**

Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending civil or criminal litigation, unless authorized by a review committee or hearing panel.

Rule 215**SERVICE**

(a) Service upon the respondent of the complaint in any disciplinary proceeding shall be made by the Disciplinary Administrator, either by personal service or by certified mail at the address shown on his most recent registration, or by certified mail at his last known office address.

(b) Service of any other papers or notices required by these Rules shall, unless otherwise provided, be made in accordance with K.S.A. 60-205.

Rule 216**SUBPOENA POWER, WITNESSES AND PRETRIAL
PROCEEDINGS**

(a) The chairman of the Disciplinary Board, any member of a hearing panel, or the Clerk of the Appellate Courts, acting under these Rules, may administer oaths

and affirmations and subject to the Rules of Civil Procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents. A respondent may, subject to the Rules of Civil Procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents before a hearing panel after formal disciplinary proceedings are instituted. Subpoenas shall clearly indicate that they are issued in connection with a confidential investigation under these Rules, and a breach of the confidentiality of the investigation by the person subpoenaed constitutes contempt of the Supreme Court. A person subpoenaed may consult with his attorney without committing a breach of confidentiality.

(b) The judge of the district court of any judicial district in which the attendance or production is required shall, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the district court.

(c) The Disciplinary Administrator in making investigations under these Rules is authorized to issue subpoenas and administer oaths.

(d) Upon request, the Disciplinary Administrator shall disclose to the respondent all evidence in his possession relevant to the proceeding. No other discovery shall be permitted.

(e) At the discretion of the hearing panel, a prehearing conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the chairman of the panel or any member of the panel designated by its chairman.

(f) With the approval of the hearing panel, a deposition may be taken by stenographic means or by electronic recording as provided in K.S.A. 60-230 if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.

(g) The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Rule 222.

Rule 217

DISBARMENT BY CONSENT OF ATTORNEY UNDER DISCIPLINARY INVESTIGATION

An attorney who, pending investigation of misconduct or while charges of misconduct against him are pending, voluntarily surrenders his license to practice law in this state or elsewhere, shall have his name stricken from the roll of attorneys and the pending disciplinary proceedings shall terminate. When an attorney surrenders his license or is disbarred, the Clerk of the Appellate Courts shall, by letter directed to the Clerks of the Supreme Courts of any other states and to federal courts in which it is known by the Clerk that the attorney is licensed to practice law, notify said Clerks of the prior proceedings in discipline in this state and the fact his name has been stricken from the roll of attorneys licensed to practice law in Kansas.

Rule 218

DISBARRED OR SUSPENDED ATTORNEYS

In the event any attorney licensed to practice law in Kansas shall hereafter be disbarred or suspended from the practice of law pursuant to these Rules, or shall voluntarily surrender his license, such attorney shall forthwith

notify in writing each client or person represented by him in pending matters, of his inability to undertake further representation of such client after the effective date of such order, and shall also notify in writing such client to obtain other counsel in each such matter. As to clients involved in pending litigation or administrative proceedings, such attorney shall also notify in writing the appropriate court or administrative body, along with opposing counsel, of such inability to further proceed, and shall file an appropriate motion to withdraw as counsel of record.

Rule 219

REINSTATEMENT

(a) Any attorney who shall have been disbarred or suspended may, by verified petition, apply for an order of reinstatement. Such petition shall bear the case number and caption appearing in the order of discipline, and an original and one copy thereof shall be filed with the Clerk of the Appellate Courts. Such petition shall set forth facts showing that the attorney has rehabilitated himself or that he is entitled to have the order of discipline vacated, terminated or modified.

(b) On receipt of such petition, the Clerk of the Appellate Courts shall immediately forward a copy thereof to the Disciplinary Administrator, and the Disciplinary Board shall thereafter promptly consider the same and report to the Supreme Court in duplicate its findings, conclusions and recommendations. The proceeding shall be governed by the applicable provisions of the Rules governing hearings in disciplinary proceedings. The Clerk, on receipt of such report, shall mail a copy thereof to the respondent.

(c) If the report of the Disciplinary Board recommends denial of the petition, the attorney shall have fifteen

days from the date of mailing of such recommendation to file with the Clerk of the Appellate Courts exceptions thereto; whereupon, the matter shall stand submitted. If the report recommends reinstatement the matter shall stand submitted for consideration. Neither briefs nor oral argument shall be permitted unless requested by the Supreme Court. The Supreme Court may impose appropriate conditions for reinstatement.

Rule 220

**PROCEEDINGS WHERE AN ATTORNEY IS DECLARED
TO BE INCOMPETENT OR IS ALLEGED
TO BE INCAPACITATED**

(a) Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of the Court. A copy of such order shall be served upon such attorney, his guardian, and the director of any institution to which he is committed in such manner as the Court may direct.

(b) When the Disciplinary Board petitions the Supreme Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate. If, upon due consideration, the Court concludes the attorney is incapacitated from continuing to practice law, it shall enter an order transferring said attorney to disability inactive status on the ground of

such disability for an indefinite period and until the further order of the Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance.

The Supreme Court shall provide for notice to the respondent of such proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if he is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent contends he is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for him to adequately defend himself, the Supreme Court shall thereupon enter an order immediately, transferring the respondent to disability inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of subsection (b) above.

If the Supreme Court shall at any time determine the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.

(d) The Clerk of the Appellate Courts shall promptly transmit a certified copy of the order of transfer to disability inactive status to the administrative judge of the judicial district in which the disabled attorney maintained his practice and shall request such action under the provisions of Rule 221 as may be indicated in order to protect the interests of the disabled attorney and his clients.

(e) No attorney transferred to disability inactive status under the provisions of this Rule may resume active

status until reinstated by order of the Supreme Court. Any attorney transferred to disability inactive status under the provisions of this Rule shall be entitled to petition for reinstatement to active status once a year or at such shorter intervals as the Supreme Court may direct in the order transferring the respondent to disability inactive status or any modification thereof. Such petition shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon receipt of the petition, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed, including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to disability inactive status by an order in accordance with the provisions of subsection (a) and thereafter, in a proceeding duly taken, the attorney has been judicially declared to be competent, the Supreme Court may dispense with further evidence that the attorney's disability has been removed and may direct the attorney's reinstatement to active status upon such terms as are deemed proper and advisable.

(f) In a proceeding seeking a transfer to disability inactive status under this Rule, the burden of proof shall rest with the petitioner. In a proceeding seeking an order of reinstatement to active status under this Rule, the burden of proof shall rest with the respondent.

(g) The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status because of disability shall be deemed to constitute

a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of the attorney's disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since the attorney's transfer to disability inactive status and he shall furnish to the Court written consent to each to divulge such information and records as requested by court-appointed medical experts.

Rule 221

APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS

(a) When an attorney has been transferred to disability inactive status because of incapacity or disability, or the attorney has disappeared or died, or has been suspended or disbarred and there is evidence the attorney has not complied with Rule 218 or it appears the affairs of his clients are being neglected, the administrative judge of the judicial district in which the attorney maintained his practice shall appoint an attorney or attorneys to inventory the files of the inactive, disappeared, deceased, suspended or disbarred attorney and with the approval of the judge take such action as seems necessary to protect the interests of the attorney and the attorney's clients.

(b) Any attorney so appointed shall not disclose any information contained in any files so inventoried except as necessary to carry out the order of the district court.

Rule 222

CONFIDENTIALITY

(a) All proceedings, reports and records of disciplinary investigations and hearings, except as hereinafter provided, shall be private and shall not be divulged in whole

or in part to the public except by order of the Supreme Court.

(b) Any person violating subsection (a) may be subject to punishment for contempt of the Supreme Court.

(c) The rule of confidentiality shall not apply to any information which the Board considers to be relevant to any current or future criminal prosecution against the attorney.

(d) Upon referral by a review committee of a complaint for panel hearing and after a determination of probable cause as provided in 210(c), all subsequent proceedings, and the record pertinent thereto, shall be public and no longer subject to the confidentiality hereinbefore set forth.

(e) The Disciplinary Administrator is authorized, in his discretion, to disclose to the Supreme Court Nominating Commission, District Judicial Nominating Commissions, or to the Governor, all or any part of the file involving any prospective nominee for judicial appointment; and the Board is authorized, in its discretion, to make public all or any part of its files involving any candidate for election to or retention in public office.

(f) Upon the completion of any investigation which results in dismissal or informal admonition the Disciplinary Administrator shall notify the complainant of the action taken and is hereby authorized to reveal to such complainant such information as he deems necessary to adequately explain the basis for the decision and action of the review committee.

Rule 223 IMMUNITY

Complaints, reports, or testimony in the course of disciplinary proceedings under these Rules shall be deemed to be made in the course of judicial proceedings. All participants shall be entitled to all rights, privileges and immunities afforded public officials and other participants in actions filed in the courts of this state.

Rule 224 ADDITIONAL RULES OF PROCEDURE

(a) Except as otherwise provided in these Rules, time limitations are directory and not jurisdictional.

(b) Except as otherwise provided, the Rules of Civil Procedure apply in disciplinary cases.

(c) In all cases where discipline is recommended, the Disciplinary Administrator shall certify to the Supreme Court costs incurred in connection with the proceedings and the Court may, in the event discipline is imposed, assess against the respondent attorney the costs so certified. All costs so assessed shall be paid to the Clerk of the Appellate Courts for deposit in the bar disciplinary fee fund.

Rule 225 CODE OF PROFESSIONAL RESPONSIBILITY

[New Rule number]